

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

DILLON M JOHNSON
Claimant

APPEAL NO: 13A-UI-13482-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

OC: 11/17/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 6, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the January 2 hearing. John Judge appeared on the employer's behalf. During the hearing, Employer Exhibits One through Six were offered. Employer Exhibits Two through Six were admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2013. The claimant worked as a full-time assistant manager.

In late September 2013, the claimant talked to his manager about quitting because he wanted a raise. The claimant's manager would not accept the claimant's resignation in late September and said they needed to talk to Judge about a raise. When the claimant talked to Judge about a raise, he was told that Judge needed to talk to the owner.

During the claimant's employment he signed the employer's alcoholic beverage agreement. The agreement informs employees they will be terminated if they sell alcohol to anyone under 21. The policy also indicates there are no exceptions. (Employer Exhibit Two.) On February 6, 2013, the claimant completed the Iowa Program for Alcohol Compliance Training. (Employer Exhibit Three.)

On October 12, 2013, the claimant received a citation for selling alcohol to a minor. (Employer Exhibit Four.) When the minor was at the cash register to buy the alcohol, there was a long line of customers waiting to be checked out. The claimant was trying to shorten the line of

customers and did not ask the minor for an ID. The minor told the claimant her birth date. The claimant then keyed in the sale but did not enter the birthdate and sold alcohol to a minor.

When the claimant went to court on November 18, he was not convicted because the sting operation had been technically improper when the minor lied about her birthdate.

On October 12 after the claimant received the citation, the employer sent him home. The employer discharged him on October 14 for selling alcohol to a minor.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant because he admitted he sold alcohol to a minor. The employer did not discharge him because he was or was not convicted of selling alcohol to a minor. The claimant admitted he sold alcohol to a minor and he did not ask to look at her ID because he had a long line of customers. Since the minor lied to the claimant about her birthdate, he could have easily asked to look at her ID, but did not. The claimant violated the employer's alcohol policy and knew that if he sold alcohol to a minor he would be discharged. Even though the claimant was not convicted of selling alcohol to a minor because of a technicality, he still sold alcohol to a minor. The employer discharged the claimant for his work-connected misconduct on October 12. As of November 17, 2013, the claimant is not qualified to receive benefits.

DECISION:

The representative's December 6, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of November 17, 2013. This

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css