

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY A WHEELER
Claimant

APPEAL NO. 11A-UI-14250-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

OC: 10/02/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated October 21, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on November 28, 2011. The claimant participated personally. Participating as a witness was Mr. Brad Hammond, claimant's father. Participating as a witness for the employer was Melissa Shinn, supervisor.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cody Wheeler was employed by Git-N-Go Convenience Stores from December 8, 2009, until October 3, 2011, when he was discharged from employment. Mr. Wheeler most recently held the position of full-time store manager and was paid by salary. His immediate supervisor was Melissa Shinn.

Mr. Wheeler was discharged from his employment with Git-N-Go Convenience Stores after he refused a reasonable and work-related directive to transfer to another Git-N-Go Convenience Store location within 15 miles of his original work location. At the time of hire, employees are informed that they are not guaranteed any particular shift or store location. Company policy allows the company to transfer employees to different store locations, as long as they are within a 15-mile radius of an employee's previous work location.

On Friday, September 30, 2011, Ms. Shinn and another manager informed Mr. Wheeler that it would be necessary for him to begin working at the company's Norwalk, Iowa, location the following Monday. The claimant was informed to report to the Norwalk location and instructed that an assistant manager would be at that location. Mr. Wheeler emphatically refused the directive. The employer, however, gave the claimant the weekend to consider the matter and to report to the new store as directed. When Mr. Wheeler did not report to the new store the following Monday as directed, a decision was made to discharge him from employment. The

decision to transfer the claimant was motivated by losses at the store where Mr. Wheeler had been previously employed and difficulty that the claimant was experiencing in managing staff members who were his personal friends.

Mr. Wheeler did not report to the Norwalk, Iowa, store as directed. The claimant contacted Ms. Shinn later on the morning of Monday, October 3, 2011, indicating that he had left a voicemail message over the weekend at the company's offices inquiring about the transfer. The employer did not consider the claimant's excuse to be satisfactory, because he did not report to the new store as directed and because he did not contact Ms. Shinn or the other managers although their telephone numbers were available. The employer also believed that Mr. Wheeler could have contacted either the Norwalk, Iowa, work location or his previous work location via telephone if he had any issues, but he had not done so. The employer believed that the claimant was aware that no one was at the company offices on Sunday nights and therefore the message would not be answered from that location.

It is the claimant's position that he had "changed his mind" and was willing to accept the new job location but did not report because of insufficient information about the transfer.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith

errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, N.W.2d 36, 39 (Iowa 1992). In this matter, the evidence establishes that Mr. Wheeler was given a specific and work-related directive to transfer to a different work location because of ongoing problems at the location where he had been previously assigned. The evidence is also undisputed that Mr. Wheeler emphatically refused to accept the directive when given to him on September 30, 2011. The claimant, however, was given the weekend to think the matter over and to report as directed. When the claimant did not report as directed, a decision was made to terminate him from his employment.

It is the claimant's position that he did not have sufficient information about the new location and therefore did not report as instructed. The administrative law judge finds the claimant's testimony to strain credibility. The evidence in the record shows that the claimant was told to report to the facility and given the reasons why. The claimant did not follow a reasonable course of action by calling either Ms. Shinn or the other manager or call either Git-N-Go Store locations to inform them of any questions or issues related to the work directive. The claimant, instead, left a message at a corporate number where he knew or should have known no one would be available to field the call or provide any answers regarding the transfer. The claimant did not choose to adopt a more reasonable course of action by reporting to the facility as directed and awaiting further instructions if necessary.

The administrative law judge concludes, based upon the evidence in the record, that the claimant's failure to report to the new work location as directed or, in the alternative, to make a personal contact with a store representative showed a willful disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law. Unemployment insurance benefits are denied.

DECISION:

The representative's decision dated October 21, 2011, reference 01, is affirmed as modified. The claimant was discharged under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw