

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANYA Y CONLEY
Claimant

APPEAL NO. 13A-UI-08033-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

OC: 06/16/13
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the July 2, 2013, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A hearing was held on August 13, 2013 in Des Moines, Iowa. Claimant participated. Employer participated through area supervisor Joshua Peralta and supervisor John Judge.

ISSUE:

Was the claimant discharged for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assistant manager from January 29, 2013 and was separated from employment on June 13, 2013. On May 17 she falsified a time sheet. Peralta visited the store and saw her walking away from the store at 6 p.m. There were no breaks on that shift. She did not sign herself out and her handwritten time sheet indicated she was at the store from 4 p.m. to 8 p.m. Peralta saw the time sheet on May 20 and first questioned the claimant about it on May 23. She said she had to go home and let someone in. On May 23 claimant revised her time sheet to say she had worked from 4 p.m. to 6:30 p.m., clocked out for ten minutes and clocked in again from 6:40 p.m. until 8 p.m. On May 28, Peralta watched surveillance video footage to see if claimant returned. There were parts of the property he could not see so on June 4, Peralta questioned cashier Shannon Green who said claimant did not return to work after she left at the store during her shift. Peralta was on personal leave from June 6, through 10. The employer's policy calls for termination without prior warning for falsification of documents.

Claimant did not make claims or receive unemployment benefits after the separation on a claim with an effective date of June 16, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct.

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.

While the final act might not be considered current, since on May 23, claimant represented that she returned to the store after ten minutes, Peralta was reasonable to investigate that claim since her original timesheet did not include that information. Since that investigation included reviewing May 17, surveillance video on May 28, and on June 4, he interviewed a coworker who worked on the same shift, the final act is considered current. Employer has presented substantial and credible evidence that claimant falsified her timesheet and lied to Peralta about having returned to work after leaving the store during her shift. This is disqualifying misconduct. Benefits are denied.

DECISION:

The July 2, 2013 (reference 01) decision is reversed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Since no weekly claims were filed and no benefits were paid, no overpayment is established.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs