

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH E TOWNE
Claimant

APPEAL NO. 15A-UI-05667-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

**OC: 04/26/15
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Git-N-Go Convenience Stores Inc. (employer) appealed a representative's May 8, 2015, decision (reference 01) that concluded Ruth Towne (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for July 14, 2015. The claimant participated personally. The employer participated by John Judge, Supervisor, and Lanette Butt, Supervisor. The employer offered and Exhibit One was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 16, 2014. In about August 2014, she became a full-time assistant manager. The claimant signed for receipt of the employer's orientation policy on January 16, 2014. The employer does not have a specific drug testing policy. The employer's policy states that possessing, selling, consuming, or being under the influence of alcohol, illegal drugs, or other illegal substances while on company property may result in termination.

On April 11, 2015, the claimant's day off, she smoked marijuana. Later she was arrested for possession of a controlled substance and drug paraphernalia. She bailed out of jail on April 11, 2015. On April 12, 2015, she appeared for work on time and the manager told her to go home. She did not appear to be under the influence of drugs or be carrying any drugs or paraphernalia. The manager heard about the arrest and sent her home. The employer terminated the claimant on April 24, 2015, because the employer has a drug free work environment.

The claimant filed for unemployment insurance benefits with an effective date of April 26, 2015. The employer participated at the fact-finding interview on May 7, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Off premises during lunch hour, claimant assaulted co-worker for alleged rumors spread by co-worker. Court of Appeals allowed benefits, noting lack of evidence of negative impact at work place plus fact that claimant finished the day before being discharged. Diggs v. Employment Appeal Board, 478 N.W.2d 432 (Iowa App. 1991). The employer terminated the claimant for something she did on April 11, 2015, when she was not at work. The employer did not provide any evidence of a negative impact on the employer's workplace. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 8, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs