

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THERESA A CHRISTIAN**  
Claimant

**APPEAL NO. 08A-UI-07223-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TODD'S ON THE GO LLC**  
Employer

**OC: 07/13/08 R: 01  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Theresa A. Christian (claimant) appealed a representative's August 6, 2008 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Todd's On The Go, L.L.C. (employer). After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on August 25, 2008. The claimant participated in the hearing. Jan Elliott appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on or about February 23, 1997. She worked full time as manager at the employer's convenience store. Her last day of work was July 15, 2008. The employer discharged her on that date. The stated reason for the discharge was not complying with corrective instruction given to her.

The employer had become concerned over the management of the company and as of January 7, 2008, brought in a new management company to oversee the operations. The claimant was aware, as of approximately the end of April or early May, that the employer was dissatisfied with the store's performance under her management. The employer had instructed the claimant that she was to open the store herself at 6:00 a.m., Monday through Friday. On or about April 28, the employer gave the claimant a reprimand for switching her opening schedule with another employee without the employer's approval. She received several additional reprimands for other conduct issues between then and June 2. On June 2 the employer gave the claimant additional warnings, which included failing to open the store on time.

On July 15 the area supervisor, Ms. Elliott, arrived at the claimant's store at approximately 9:30 a.m. and discovered that half of the store's gas pumps were non-functional and had been since about 4:00 p.m. the prior afternoon and that by the time the Ms. Elliot arrived, the claimant had not yet either notified the employer of the problem or contacted the repair company to come to make repairs.

Later that morning, Ms. Elliott ran a payroll report from the store's system. She saw that for the pay period running between July 1 and July 14 the claimant had not gotten to the store to open until after 6:00 a.m. on six days, with two occurrences being about 15 minutes late, one occurrence about 20 minutes late, and another occurrence nearly 30 minutes late. After the prior warnings and the mishandling of the malfunction pump issue, and then observing the claimant's failure to comply with the prior instruction that she was to open the store by 6:00 a.m., the employer determined to discharge the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's failure to comply with the employer's instruction that she open the store by 6:00 a.m., despite the prior warnings advising her that her job was in jeopardy, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's August 6, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 15, 2008. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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