

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA CLARK
Claimant

APPEAL NO. 100-UI-03014-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

**Original Claim: 09/27/09
Claimant: Respondent (4/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct
Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Git-N-Go Convenience Stores, Inc. (employer) appealed an unemployment insurance decision dated October 22, 2009, reference 01, which held that Lisa Clark (claimant) was eligible for unemployment insurance benefits. Administrative Law Judge Julie Elder conducted an initial hearing on this matter in appeal 09A-UI-16393-ET, in which benefits were allowed from October 3, 2009 through October 31, 2009 but denied thereafter. The claimant appealed the decision and the Employment Appeal Board (EAB) could not review the evidence because the voice file was missing. The EAB remanded for a new hearing in an order dated February 19, 2010. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled to be held on May 18, 2010. No hearing was held, because the appellant failed to comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted. Based on the evidence and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was working the same hours as contemplated in her original contract of hire from the week ending October 3, 2009 until her separation date of November 3, 2009. Additional issues to be addressed are whether the claimant was discharged for misconduct and whether she was overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The Findings of Fact set forth in the decision in appeal 09A-UI-16393-ET are adopted and incorporated herein as if set forth at length.

REASONING AND CONCLUSIONS OF LAW:

The Reasoning and Conclusions of Law of the administrative law judge in appeal 09A-UI-16393-ET are adopted and incorporated herein as if set forth at length.

DECISION:

The unemployment insurance decision dated October 22, 2009, reference 01, is modified in favor of the appellant. The claimant is eligible for partial unemployment benefits from the week ending October 3, 2009 through October 30, 2009. She was discharged on November 3, 2009 for work-related misconduct and benefits are denied thereafter. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw