

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE LADD**  
Claimant

**APPEAL NO. 07A-UI-06923-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GIT-N-GO CONVENIENCE STORES INC**  
Employer

**OC: 06-10-07 R: 02  
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 5, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 1, 2007. The claimant participated in the hearing. Randy Ratcliff, Director of Marketing and Linda McKelvey, Supervisor, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time manager for Git-N-Go Convenience Stores from January 6, 2006 to April 11, 2007. The employer requires managers and assistant managers to have dependable transportation because they are responsible for making the deposits and also needed the claimant to be reliable in opening the store. On January 22, 2007, the claimant received a written warning for poor job performance because she did not take the deposit to the bank or complete her paperwork on time and was late in opening the store two days in a row. On February 18, 2007, she received a verbal warning for a security violation after the Polk County Jail called the employer and said she was arrested for not having a driver's license while driving the store deposit to the bank. That deposit should have been made the day before and the employer was required to go to the jail and pick it up. On March 16, 2007, she received a written warning for late openings on February 3, February 15, March 1, March 3, March 7 and March 10, despite prior warnings. The February 28, 2007, deposit was not made until March 6, 2007; and the March 8 and 9, 2007, deposits were not made until March 13, 2007. That warning also reprimanded the claimant for failing to send the grocery order, failing to complete the daily and gas reports on time; order the magazines each week; and failing to complete the price changes on time. The employer was concerned about the bookwork being so erratic and the bank would often call to say the deposits were wrong. The claimant stated she would work on getting her driver's license back and would let the employer know when that was accomplished because the employer told her she needed her license to be able to continue as

manager due to all the problems with the deposits and late openings. The claimant did not contact the employer until April 2, 2007, and the employer told her she could return to work but the claimant did not contact the employer again until April 11, 2007, at which time the employer told her it considered her to have voluntarily quit her job by job abandonment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the 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.

In order to show a voluntary quit there has to be intent to quit on the part of the claimant. While the claimant's actions in this case could be construed as job abandonment, the fact that she did call the employer after securing her license demonstrates that she did not wish to quit. Therefore, the issue is whether the claimant was discharged for disqualifying job misconduct. The administrative law judge concludes she was. The claimant was warned three times about making her deposits and completing her bookwork on time. Despite those warnings, however, her performance in those areas did not improve. Although employees are not required to have a driver's license, they are required to have dependable transportation so they can make bank deposits and in the claimant's case open the store on the mornings she was scheduled to work. The claimant failed to make bank deposits on time on at least eight occasions and arrived late for work 34 times. Following the warning on March 16, 2007, the claimant told the employer she

was going to get her driver's license but did not contact it until April 2 and did not call again until April 11, 2007. While the claimant may not have intended to abandon her job she was absent without calling in during that time period and her absences, coupled with the warnings about the deposits and paperwork, demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

**DECISION:**

The July 5, 2007, reference 01, decision is affirmed. The 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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