

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SONJA M PALMER**  
Claimant

**APPEAL NO. 07A-UI-01991-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

**OC: 01/14/07 R: 02  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sonja Palmer filed an appeal from a representative's decision dated February 7, 2007, reference 01, that denied benefits based upon her separation from Git-N-Go Convenience Stores, Inc. After due notice was issued a telephone conference hearing was scheduled for and held on March 14, 2007. The claimant participated. The employer participated by Linda McKelvey, Supervisor. Exhibits One and Two were received into evidence.

**ISSUE:**

At issue in this matter is whether the claimant was discharged from employment for disqualifying misconduct.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Palmer was employed as a full-time cashier for Git-N-Go Convenience Stores, Inc. from July 29, 2006 until November 8, 2006 when she was discharged. Ms. Palmer was paid by the hour and her immediate supervisor was Linda McKelvey.

Ms. Palmer was separated from her employment after she failed to return to work after being released by her physician to do so effective October 24, 2006. The claimant provided a doctor's release to her employer and was scheduled and expected to report for work. Ms. Palmer did not directly notify her supervisor that she would be unable to report for scheduled work and the supervisor had no further contact from the claimant until November 8, 2006. As the claimant had been often absent and had been previously warned, she was discharged from employment after she had failed to report to Ms. Kelvey's after being released on October 24, 2006.

After initially being released by her physician it appears that Ms. Palmer subsequently again became ill. The claimant subsequently received and provided a doctor's note indicating that she had been ill after October 24, 2006. Although the manager, Ms. McKelvey was regularly available, the claimant did not provide any notification to the manager regarding her inability to report back to work after initially being released on October 24, 2006. The claimant maintains

that she informed other hourly employees, one of which may have had some supervisory authority.

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

The administrative law judge concludes based upon the evidence in the record that the claimant's discharge from employment took place under disqualifying conditions. The evidence in the record establishes that Ms. Palmer had been absent on numerous occasions and had been warned. The claimant was aware that the employer considered her attendance to be unsatisfactory. The claimant was also aware that the employer required and expected reasonable notification if an employee was unable to report for work. Although the claimant had been released to work effective October 24, 2006, and had provided a doctor's release to her manager, she did not again contact her manager to inform management that she would not be reporting as expected. The claimant did not provide any further notice to company management until reporting back on November 8, 2006. At that time the claimant was informed that she had been discharged from employment. The administrative law judge finds that the claimant's failure to provide reasonable notification to company management showed a disregard of the employer's reasonable expectations and standards of behavior under the Iowa Employment Security Law. The claimant had informed her manager that she had been released on October 24, 2006 but did not inform the manager that she would not be reporting back for scheduled work as agreed.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

For the reasons stated herein, the administrative law judge finds that the claimant's separation from employment took place under disqualifying conditions. Benefits are denied.

**DECISION:**

The representative's decision dated February 7, 2007, reference 01, is affirmed. The claimant was discharged for misconduct. Benefits are withheld until such time as she has worked in and has been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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