

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY M SCOTT**  
Claimant

**APPEAL NO: 09A-UI-19537-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 11/29/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's December 21, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on February 9, 2010. The claimant participated in the hearing. Deb Ainsley, the manager, 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 11, 2008. The claimant worked as a part-time clerk or pizza maker. The employer's policy informs employees that if a customer looks 27 years old or younger, the cashier must ask to see the customer's driver's license to make sure the customer can legally purchase cigarettes. The employer's policy also warns employees that if they are caught selling cigarettes to a minor, the employer must discharge the employee.

On December 3, 2009, local enforcement officials operated a sting to see if any local establishments sold cigarettes to minors. An underage female customer went to the employer's store to purchase cigarettes. The female worked with the law enforcement officials. The claimant noted that this customer was not more than 27 years old. He did not, however, ask to see her driver's license or identification because he thought he sold cigarettes to her the previous week ago and had asked to see her license at that time. The claimant sold cigarettes to the customer a week before. The December 3 customer was not old enough to legally buy cigarettes. The claimant and/or employer received a citation for selling tobacco to a minor. As a result of the December 3 incident and the employer's policy, the employer discharged the claimant on December 4. Prior to December 3, the claimant's job was not in jeopardy and the employer considered him a good employee.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. On December 3, the claimant made an error in judgment when he did not ask to see a customer's driver's license because he thought she had purchased cigarettes the previous week when he had checked her license. The customer he checked a week earlier was old enough to buy cigarettes. Since the claimant's job was not in jeopardy prior to the December 3 incident, this isolated incident does not constitute work-connected misconduct. Therefore, as of November 29, 2009, the claimant is qualified to receive benefits.

## DECISION:

The representative's December 21, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of November 29, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs