

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MISTY M HEMANN**  
Claimant

**CASEY'S MARKETING COMPANY**  
Employer

**APPEAL 20A-UI-01581-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/12/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Misty Hemann (claimant) appealed a representative's February 14, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2020. The claimant participated personally. The employer participated by Julie Burke, Area Supervisor.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 15, 2014 and at the end of her employment she was working as a full-time store manager. She signed for receipt of the employer's handbook on May 7, 2018. The handbook states, "All employees are expected to conduct themselves and behave in a manner which leads to the efficient and effective operation of the Company."

On September 13, 2016, the employer issued the claimant a written warning for overages on lottery in excess of \$6,000.00. On April 6, 2018, she received a written warning for losing the store's December 2018, January 2019, and February 2019, payroll records. On July 26, 2018, the claimant got a written warning for waiting a day or two before making a bank deposit. The employer issued her a written verbal warning on August 7, 2019, for store cleanliness and having outdated product in the kitchen. On September 18, 2018, the employer issued the claimant a verbal written warning for failure to log daily pump security inspections at her store for five months. The claimant failed to report the receipt of a counterfeit bill and received a verbal written warning on October 9, 2018. On November 20, 2018, the employer issued the

claimant a three-day suspension regarding her performance issues. It offered her the option of stepping down. The claimant refused the demotion and remained a store manager.

On June 25, 2019, the employer issued the claimant a verbal written warning when the claimant's store failed a tobacco/alcohol restricted policy internal test. Two other workers were found to have not followed policies due to training inadequacies in the store. On December 5, 2019, the claimant received a verbal written warning for failure to exhibit the required signage in her store. The employer notified the claimant each time that further infractions could result in termination from employment.

The area supervisor had concerns with wage costs in the claimant's store. It spoke with her about not letting employees stay longer and keeping costs down. In an effort to review costs, the area supervisor sent an email to the claimant on January 6, 2019, requesting information on hours work by employees. The information would have taken one hour, at most, to compile. The claimant did not respond to the request for information or offer any explanation for her noncompliance between January 6 and January 14, 2019. On January 14, 2019, the employer terminated the claimant for failure to follow instructions and provide information. The claimant did not respond because she was not working, the area supervisor was out of town, and she had to collect information from employees.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. She failed to follow instructions when she did not respond to the employer's email, when she did not provide the information requested, and, within a reasonable time frame, she did not offer a reasonable explanation for not producing information. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's February 14, 2020, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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