

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER L CULVER
Claimant

APPEAL NO. 13A-UI-07551-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/19/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's June 19, 2013 decision (reference 01) that concluded Jennifer Culver (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 30, 2013. The claimant participated personally. The employer participated by Julie Sullivan, Area Supervisor. The employer offered and Exhibit One was received into evidence.

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 April 2, 2012, as a full-time kitchen manager. The claimant signed for receipt of the employer's handbook on April 2, 2012. The employer did not issue the claimant any warnings during her employment.

The employer frequently ran out of small and medium pizza boxes and put those sized pizzas in large boxes. If a customer saved ten coupons from a large pizza box, the customer would receive a free pizza. The employer removed the coupons from the boxes of smaller pizzas in the large boxes. The claimant suggested to the store manager that the coupons be used as an employee incentive or raffle. The store manager agreed so long as the area supervisor did find out and gave the claimant authority to use the coupons for that purpose.

A few weeks went by and the kitchen was fully staffed. Later the kitchen was short workers. One employee came in early, worked late, and worked extra shifts. The employee asked the claimant if he could have a free pizza. The claimant gave the employee ten coupons for a free pizza for being a good employee. The area supervisor discovered the claimant's actions and terminated her on May 22, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant's supervisor gave the claimant permission to use the coupons. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's testimony. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 19, 2013 decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs