

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACQUELINE A BURKS**

Claimant

**CASEY'S MARKETING COMPANY**

Employer

**APPEAL NO: 13A-UI-08739-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/23/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated July 22, 2013, reference 02, that held she was discharged for misconduct on June 21, 2013, and benefits are denied. A telephone hearing was held on September 3, 2013. The claimant participated. Esther Walker, Store Manager, and Deb Ahrens, Area Supervisor, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on February 16, 2007, and last worked for the employer as a full-time assistant manager on June 21, 2013. The employer issued a verbal warning written discipline to claimant on March 20, 2013 for repeated texting to employees who felt harassed by it. Claimant agreed she would be more professional. About the first part of June the employer had a conflict resolution filed against claimant for unprofessional behavior, and the area supervisor counseled claimant about it.

On June 20 the store manager received an employee complaint claimant had grabbed her arm in order to direct her to work the cash register. The employee showed the manager a visible bruise on the upper arm about the size of a thumb print. When the employee confronted claimant she denied and later admitted she might have touched the employee.

The employer watched the June 15 store video and concluded claimant did touch the employee while claimant contends it does not.

The employer discharged claimant from employment on June 21, 2013 for violation of its harassment/discrimination policy for her inappropriate behavior with an employee on June 15 in light of verbal discipline.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes employer established claimant was discharged for misconduct on June 21, 2013 for conduct not in the best interest of the employer.

The store video is not conclusive evidence claimant grabbed the employee by the upper arm as is contended by the employer. There is sufficient evidence of the contact based on the employee complaint to management and its observance of the bruise. While this incident is not sufficient evidence of job disqualifying misconduct the prior verbal warnings do establish a pattern of claimant inappropriate contact/behavior with store employees that does.

**DECISION:**

The department decision dated July 22, 2013, reference 02, is affirmed. The claimant was discharged for misconduct on June 21, 2013. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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