

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK SIBOLE**

Claimant

**APPEAL NO. 09A-UI-19547-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/15/09**

**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Casey's Marketing Company filed an appeal from a representative's decision dated December 22, 2009, reference 01, which held that no disqualification would be imposed regarding Rick Sibole's separation from employment. After due notice was issued, a hearing was held by telephone on February 10, 2010. Mr. Sibole participated personally. The employer participated by Katie Brunning, Store Manager. Exhibits One and Two were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Mr. Sibole was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Sibole was employed by Casey's from August 3, 2006 until November 17, 2009 as a full-time cashier. He was discharged after he sold cigarettes to a minor during a "sting" operation. Cashiers are required to obtain age verification before selling age-restricted products to any individual who appears to be under the age of 27.

The employer prefers that cashiers use the scanner that reads the identification to determine if the individual is of legal age. Some employees, however, have difficulty using the scanner as the identification has to be held in precisely the correct way in order for the scanner to read it. If the cashier does not use the scanner, there is a second mechanical means of inputting information into a system that determines the age. The last method is to enter the individual's birth date into the register and the register will indicate whether the person is of age.

On November 14, a young female purchased cigarettes. The employer's review of the video surveillance showed Mr. Sibole request and obtain identification from the individual and enter the birth date into the register. He did not use the scanner or other mechanical device. He misread the birth year and entered 1984 rather than 1994. This caused the register to indicate

that she was of legal age. As it turned out, the individual was only age 15, not old enough to purchase cigarettes. Therefore, Mr. Sibole was discharged on November 17, 2009.

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

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Sibole was discharged because he sold cigarettes to a minor in violation of a store policy and state law. The administrative law judge concludes from all of the evidence that his actions were inadvertent and not deliberate.

This is not a case in which the cashier totally failed to verify age before allowing a purchase. Mr. Sibole requested identification as required. Although it may have been preferable for him to use the scanner, it was not required. He used an accepted means of verifying that the individual was of legal age by entering her birth date into the register. His error was in misreading the birth year. At most, he was negligent. Negligence constitutes disqualifying misconduct only if it is so recurrent that it manifests a substantial disregard of the employer's interests or standards.

Mr. Sibole worked as a cashier for Casey's for over three years. It is presumed that he had numerous opportunities to sell age-restricted products over the course of time. He did not have any history of selling age-restricted products to minors. His actions on November 14 represented an isolated instance of simple negligence. A single incident of negligence is not sufficient to establish disqualifying misconduct within the meaning of the law. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App 1986). Although the employer may have had good cause to discharge Mr. Sibole, conduct that might warrant a discharge will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons stated herein, benefits are allowed.

### **DECISION:**

The representative's decision dated December 22, 2009, reference 01, is hereby affirmed. Mr. Sibole was discharged by Casey's but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

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