

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAROLYN A LAMMERS**  
Claimant

**APPEAL NO. 09A-UI-05394-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING CO**  
Employer

**Original Claim: 03/01/09  
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Casey's, filed an appeal from a decision dated March 24, 2009, reference 01. The decision allowed benefits to the claimant, Carolyn Lammers. After due notice was issued, a hearing was held by telephone conference call on May 4, 2009. The claimant participated on her own behalf. The employer participated by Area Supervisor Connie Smith and was represented by TALX in the person of Alyce Smolsky. Exhibits One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Carolyn Lammers was employed by Casey's from June 15, 1998 until March 3, 2009 as a full-time store manager. On January 30, 2009, she was placed on a "developmental plan" because of her failure to meet some of the requirements of her job duties. One of the areas in which she needed improvement was enforcing company policies and disciplinary actions with employees.

On February 25, 2009, Area Supervisor Connie Smith talked to Ms. Lammers about April, the assistant manager. April had received progressive disciplinary action for attendance, and the final warning stated any further attendance problems would result in discharge "per supervisor." Ms. Smith told the claimant she (the claimant) would have to "take care" of April if she (April) missed any more work. The claimant stated she had vacation scheduled and if she discharged the assistant manager, she would be the only one who would "get screwed."

The next day, April was again late to work but the claimant did nothing. On February 27, 2009, Ms. Smith was in the store and the claimant was not scheduled. April came to Ms. Smith crying and said she had been late to work the previous day and she did not know what Ms. Lammers was going to do about it. Ms. Smith discovered a voice mail on her phone from the claimant

earlier that day that said she would be “in and out” of the house that day, would be “gone” February 28 and March 1, 2009, but could possibly work on March 2, 2009.

Ms. Smith discharged the claimant on her next scheduled day of work March 3, 2009, for failing to follow the instructions to discharge April as required under the progressive disciplinary policy.

Carolyn Lammers has received unemployment benefits since filing a claim with an effective date of March 1, 2009.

## **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 claimant had been given specific instructions to “take care” of the problem with April's attendance the next time she was late or absent to work. Under the employer's progressive disciplinary policy, that would mean discharge as stated in the prior warning. For some reason, the claimant still did not feel she could discharge the assistant manager because she had not hired her, but there is nothing in the handbook that requires the person who hired the assistant manager to be consulted before the manager could discharge her. At no time did Ms. Lammers ask Ms. Smith for clarification on what “take care” of meant exactly, or for specific instructions about what to do if the assistant manger missed more work.

It appears the claimant was more concerned about having to replace April in the store than in enforcing the company policies. Ms. Lammers had already stated she would be the one who would "get screwed" if she fired the assistant manager and had to replace her. This is supported by her actions on February 26, 2009, when she did not attempt to contact Ms. Smith for the alleged "approval" she felt she needed to discharge April. Instead, she waited until the next day when she would not be on duty to inform the area supervisor of the problem via voice mail.

The record establishes the claimant did not discharge the assistant manager as instructed to do because she did not want to forfeit her vacation. This is a choice she made to ignore clear company policies and progressive disciplinary procedures. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of March 24, 2009, reference 01, is reversed. Carolyn Lammers is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw