

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY M HARPER**

Claimant

**APPEAL NO. 15A-UI-06701-S1**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 05/17/15**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Kimberly Harper (claimant) appealed a representative's June 1, 2015, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for August 11, 2015, in Cedar Rapids, Iowa. The claimant participated personally. The employer participated by Jesse Cooksley, Manager, and Cheri Svestka, 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 June 20, 2013, as a full-time cashier. The claimant signed for receipt of the employer's handbook on June 20, 2013. On January 7, 2015, the employer issued the claimant a written warning for receiving three customer complaints in thirty days. The claimant admitted to one of the incidents. The other two incidents were reported to have occurred at locations the claimant was not working but fit the claimant's working location and description. On February 16, 2015, the employer issued the claimant a written warning for intentionally ignoring a customer. From the recording, the claimant and the employer believe the customer may not have heard the claimant. The claimant did not take steps to insure the customer did not feel ignored. On March 6, 2015, the employer issued the claimant a written warning for tossing bread more than a foot onto a table to prepare a sandwich. After watching the recording, the employer did not believe her actions looked professional. The employer suspended her for three days. The employer notified the claimant each time that further infractions could result in termination from employment.

On May 15, 2015, a business owner complained about the claimant. The employer went to the business to talk to the owner. The owner explained that he asked about a product and the claimant said, "I don't drink that shit". Two other people told the employer they heard the

claimant make the statement. The claimant denied saying it. On May 15, 2015, the employer terminated the claimant.

### **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:

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.

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. 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 June 1, 2015, 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.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/css