

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONYA R BROWN
Claimant

APPEAL NO. 09A-UI-08699-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/03/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Casey's Marketing Company filed an appeal from a representative's decision dated June 8, 2009, reference 01, which held that no disqualification would be imposed regarding Tonya Brown's separation from employment. After due notice was issued, a hearing was held by telephone on July 24, 2009. Ms. Brown participated personally. The employer participated by Deb Budrow, Manager. Exhibits One through Seven were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Brown 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: Ms. Brown was employed by Casey's from February 26, 2007 until May 1, 2009. She was last employed full time as an assistant manager. She was discharged as a result of improper cash handling on April 28, 2009.

At 12:22:46 p.m. on April 28, a customer purchased a quarter-pound burger, two candy bars, a bottle of pop, and two donuts from the self-serve case. The customer tendered payment of \$10.00. While still holding the customer's payment, Ms. Brown hit the "no sale" button at 12:22:49, thereby voiding the transaction. The register drawer opened and the customer was given change of approximately \$1.00. At 12:23:05, with the customer still at the register, Ms. Brown rang up just the burger and indicated that \$9.00 was tendered as payment. No additional money was removed from the register at that time. The customer then took the burger, candy bars, donuts, and bottle of pop and left the store. These items were not in a bag. Ms. Brown signed that she agreed with the employer's written narrative outlining the above actions. The narrative was prepared from a review of the video surveillance tape.

When questioned as to why she did not ring all of the items, Ms. Brown indicated that she did not know. As a result of the above, she was discharged on May 1, 2009. She filed a claim for

job insurance benefits effective May 3, 2009. She has received a total of \$2,574.00 in benefits since filing the claim.

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). Ms. Brown was discharged due to improper cash-handling procedures. She failed to ring in items totaling approximately \$6.22 on April 28 in spite of the fact that the customer paid for all items.

The evidence of record does not establish any reasonable cause for Ms. Brown's failure to ring up all items. It was her contention that she voided the sale because she inadvertently rang up two candy bars instead of one. However, when she re-rang the transaction, she did not include any candy bars. Less than one minute elapsed between the time she rang the initial purchase and when she rang up only the burger. The four or five items being purchased were still on the counter in full view. Given these factors, the administrative law judge is not inclined to believe Ms. Brown forgot there were other items being purchased.

When she rang in only the burger, Ms. Brown indicated that \$9.00 had been tendered by the customer. If she had, in fact, forgotten about the other items being purchased, one would have to wonder why she did not give the customer change back from the \$9.00 she said was tendered for the burger. According to the narrative prepared from the surveillance tape, and agreed to by Ms. Brown, no additional money was given to the customer after the initial change of approximately \$1.00.

For the reasons stated herein, the administrative law judge cannot conclude that there was an innocent mistake on Ms. Brown's part on April 28. Her actions constituted dishonesty, which is clearly contrary to the type of behavior an employer has the right to expect. It is concluded, therefore, that disqualifying misconduct has been established and benefits are denied. Ms. Brown has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment.

As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated June 8, 2009, reference 01, is hereby reversed. Ms. Brown was discharged by Casey's for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her

weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Brown will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs