

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE L HARE
Claimant

APPEAL NO: 12A-UI-00286-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12/04/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Renee L. Hare (claimant) appealed a representative's January 6, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 7, 2012. The claimant participated in the hearing. Riea Searcy appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 10, 2006. She worked full time as a cook in the employer's Manly, Iowa store. Her last day of work was December 5, 2011. The employer discharged her on December 6, 2011. The reason asserted for the discharge was removal of company property without payment.

On December 5 the claimant was working a 4:00 p.m. to 11:15 p.m. shift. That evening, the store's assistant manager was working at the front register. Before the claimant closed down the kitchen equipment for the night, the assistant manager told the claimant not to turn off the fryer yet, as she wanted to make herself a sandwich that she said she was not going to pay for. The claimant then decided to make herself a sandwich also. About ten minutes before the two of them locked up the store and left, the claimant brought a box of left over doughnuts and the sandwich to the counter. The assistant manager rang up the donuts and the claimant paid for them. The assistant manager did not ring up the sandwich; the claimant assumed that she was

being allowed to have the sandwich for free since the assistant manager had said she was going to have a free sandwich herself, and because this had been a common practice at the store. Unknown to the claimant, a while earlier the assistant manager had paid for her sandwich. The employer had no explanation as to why the assistant manager did not ring up the sandwich but did ring up the donuts, when even the employer's video surveillance indicated that the claimant had presented both at the register.

The assistant manager subsequently contacted the area supervisor and reported that the claimant had taken a sandwich from the store without paying for it. When the employer verified that in fact the claimant had not paid for the sandwich, it discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the removal of company property without payment. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. While the claimant did remove product without payment, she had presented the product for payment, and when the assistant manager did not charge the claimant at the register, the claimant mistakenly relied on the assistant manager's apparent authority to waive payment. Under the circumstances of this case, the claimant's mistaken reliance on this apparent authority was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's

actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 6, 2012 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs