

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KAYLA CARY
Claimant

APPEAL NO. 10A-UI-13159-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/18/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Kayla Cary (claimant) appealed an unemployment insurance decision dated September 13, 2010, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Casey's Marketing Company (employer) for theft. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on November 5, 2010. The claimant participated in the hearing. The employer participated through Supervisor Sue Hayungs. Employer's Exhibits One and Two were admitted into evidence. 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:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier from July 21, 2009 through July 20, 2010. At the time of hire, she signed an acknowledgement of the employer's theft and employee discount/purchase policies. The claimant was discharged for theft of food.

A co-worker left a note for the employer on July 15, 2010 that the claimant ate a piece of pizza from the food warmer at 7:55 p.m. and again at 9:30 p.m. but failed to pay for the food. A different co-worker left a note for the employer on July 17, 2010 that the claimant ate three pieces of pizza from the warmer and failed to pay for them. Supervisor Sue Hayungs received the notes and investigated the matter. The claimant was seen on surveillance tape eating the pizza on both nights, but there were no receipts on the electronic journal for her shifts showing proof of payment.

The claimant was questioned on July 20, 2010 by the supervisor and she admitted eating the pizza but claimed she paid for it. At the hearing, the claimant admitted she ate the pizza but

denied claiming that she said she paid for it. She said she was hungry and ate it because it was going to be thrown out. An employee may purchase food at half price, but they always have to pay for it, even if it is just going to be thrown in the garbage. The claimant disagrees with this policy and said other employers have encouraged her to eat food that was going to be thrown away.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on July 20, 2010 for theft. She admitted she ate food for which she did not pay but does not see anything wrong with her actions; she simply thinks the employer's policy is wrong. The claimant's theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of

the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 13, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw