

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELISSA L LOWERY**  
Claimant

**APPEAL NO. 09A-UI-08813-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 05/10/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated June 9, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 7, 2009. Claimant participated. Employer was called twice at the number provided to the Appeals Section and was not available. The employer did not participate. Exhibit 1, pages 1—9 was admitted into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 24, 2009. The claimant was off duty on that day. She went to the Casey's store she worked at and purchased a beverage containing alcohol. The claimant did not open the beverage. She did join two other Casey's employees in the parking lot who were drinking alcohol. The employer has a policy, which the claimant received, that states: "4. An employee shall not store open containers of alcohol or any illegal drugs in a company-owner vehicle or on Company premises, including personal vehicles parked on Company premises." Exhibit 1, page 2. The claimant was not drinking alcohol on company premises. The claimant was not storing alcohol on company premises.

**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 employer has failed to prove misconduct. The employee was not drinking on the premises. The claimant was not working on the day she was fired and outside of the store visiting with other employees.

The administrative law judge holds that the evidence has not established that claimant was discharged for an act of misconduct.

**DECISION:**

The decision of the representative dated June 9, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/pjs