

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
MICHELLE R RICHARD Claimant	APPEAL NO: 11A-UI-16368-DT
CASEY'S MARKETING COMPANY Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 11/20/11 Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's December 16, 2011 decision (reference 01) that concluded Michelle R. Richard (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2011. The claimant participated in the hearing. Sherrie Flynn 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:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on March 3, 2011. She worked full-time as a clerk at the employer's Walcott, Iowa store. Her last day of work was November 19, 2011. The employer discharged her on that date. The reason asserted for the discharge was failing a tobacco sale sting.

The claimant worked a 2:00 p.m.-to-11:00 p.m. shift on November 18. At about 8:30 p.m., a female customer came to the claimant's counter and asked to purchase some cigarettes. The claimant asked for the customer's identification and attempted to swipe it through her register's scanner. The register appeared to give her an error report, something that had happened a few times earlier in the shift. There were three customers in line, so the claimant, attempting to move the transaction along, manually entered the birth date into the employer's system. However, she misread the birth date on the identification card, believing it read a birth year of 1984 rather than the actual birth year of 1994. As a result of entering an incorrect birth year, the

employer's system indicated the sale was allowed, so the claimant proceeded to complete the transaction, and the customer left. A short time thereafter, a police officer entered the store and issued tickets for an underage sale to both the claimant and the employer. Shortly after 9:00 p.m., the claimant called and informed the store manager, Flynn, what had happened.

On November 19 the employer discharged the claimant because of the employer's policy, of which the claimant was on notice, requiring discharge of an employee who fails an underage sale sting.

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 that 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 that 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 her failure of the underage sale of tobacco sting on November 18. Misconduct connotes volition. *Huntoon*, supra. Under the circumstances of this case, the claimant's sale of the tobacco product to the underage customer was due to an unintentional misreading of the identification card, and 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 December 16, 2011 decision (reference 01) is affirmed. 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/kjw