

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**FELICIA B MACKERL**  
Claimant

**CASEY'S MARKETING COMPANY**  
Employer

**APPEAL NO. 19A-UI-00971-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/30/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated January 29, 2019, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 18, 2019. Claimant participated personally. Employer participated by Rhea Arciga. Employer's Exhibits 1-10 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether 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 January 3, 2019. Employer discharged claimant on January 3, 2019 because claimant activated numerous gift cards over the phone in violation of company policies.

Claimant was an assistant manager for employer. As a part of her initial training, claimant received documents and instructions on identifying and stopping attempted fraud. Employer explained through documents and training that fraud often occurs when the fraudster would call over the phone attempting to get a gift card activated over the phone and giving a credit card number to do so. Towards that end, on the phone at work, it states to never activate a gift card over the phone. Additionally, a sign on the cash register states to never activate gift cards over the phone, but instead to hang up the phone. Lastly, as a part of the procedure to activate gift cards, the store computer states that the cards are not to be activated unless done in person.

On December 27, 2018 claimant was at work early in the morning. Her pizza and donut maker received a call on the pizza phone. The person said they were from corporate and wanted to get a chip reader installed. The person coming to install was behind, so corporate wanted to begin moving ahead with the process. The pizza worker said that the phone wasn't working properly, and got a number to call back from her cell phone. When the pizza maker called back,

the number came up as a Casey's number. The pizza maker went back to making pizzas, and gave the phone to claimant.

Claimant then spoke with this person for over an hour, purportedly giving a variety of numbers of different items. Included within those items were a number of gift cards. The person had claimant activate a number of the gift cards over the phone. Claimant ignored the signs and the computer warning in choosing to repeatedly activate cards. Eventually, claimant got frustrated that she was on the phone for so long, and texted the store manager that she'd been on the phone going over items with corporate for an extended period. The manager texted claimant to hang up immediately.

When the manager came in, it was discovered that claimant had activated over \$700.00 worth of gift cards over the phone to this person she believed was with corporate. The scam was discovered immediately and employer was able to recover approximately \$400.00 of the activated gift cards.

Claimant stated and employer agreed that there had been a previous incident at another Casey's a year or so ago wherein a like situation occurred and that employee was only suspended for a week and not terminated. Neither knew the particularized circumstances behind the suspension, but all employees knew it had happened.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct 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. Rule 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 Ct. 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning opening gift cards over the phone. The last incident, which brought about the discharge, constitutes misconduct because employer's request to have all employees not open gift cards unless the requesting person was present for the request. If this was simply a note put in one area, or mentioned at training, claimant would have a valid argument. But in this matter, claimant had to act against information received at training, stickers on the phone, a posting on the cash register, and had ignored the computer warning given when claimant started the process to open a gift card. The combination of these actions creates an intent on claimant's part to knowingly ignore employer's interests. That the phone number showed 'Casey's' in this day and age should not have been near enough information in and of itself to ignore procedures that were so obviously important to employer. Claimant should have followed different and more complex procedures to ensure that the phone which came up as a Casey's number was in fact a Casey's number. As soon as claimant called her manager, she was told to immediately to hang up, without the manager receiving any more information. This was an obvious scam that members of management such as claimant must be on the lookout to prevent. The administrative law judge holds that claimant was discharged for

an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated January 29, 2019, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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