

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA M PENTON  
414 MAIN ST APT 6  
YALE IA 50277-8585**

**APPEAL NO: 09A-UI-19538-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY  
c/o TALX UC E XPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA M PENTON**

Claimant

**APPEAL NO: 09A-UI-19538-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/20/09**

**Claimant: Respondent (1)**

Section 96.5-2-a Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's December 21, 2009 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on February 9, 2010. The claimant participated in hearing with her witness, Chrystal Magee. Todd Garrett, the area supervisor, 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:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 7, 2008. She most recently worked as a full-time pizza maker.

On November 30, 2009, a male customer talked to the employer's store manager and reported that he would not buy any more pizzas from the employer because the claimant left a note on his pizza box that said, "Call me." The claimant signed her name and wrote her phone number on the note. The employer understood the claimant wanted the customer to call her for a date.

On the day this incident occurred, Magee was present because she was waiting for her pizza. Magee heard the claimant ask the customer if he could look at her car. The customer responded that he did not have time to talk to her at that moment, but the claimant should write down her phone number and he would call her later. The claimant is married and denied she had any intention of wanting the customer to call her for a date. She gave the customer her phone number so he could call her and set up time he would look at her car.

On November 30, after the claimant told the employer the note was joke, the employer discharged her for improper conduct.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the testimony presented during the hearing, the claimant may have used poor judgment when she gave a customer her phone number, but the facts do not establish that she wanted the customer to call her for a date. Instead, both the claimant and Magee understood the customer wanted the claimant's phone number so he could call her later and set up an appointment for him to look at her car. The note the claimant left the customer does not rise to the level of work-connected misconduct. Therefore, while the employer established business reasons for discharging the claimant, she did not commit work-connected misconduct.

## DECISION:

The representative's December 21, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of November 29, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css