

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEIDI M WILKERSON
Claimant

APPEAL NO. 07A-UI-09242-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 10/01/06 R: 03
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 26, 2007, reference 02, decision that allowed benefits. After hearing notices were mailed to the parties' last-known addresses of record a telephone hearing was held on October 16, 2007. The claimant participated personally. The employer participated by Melanie Cline, Manager.

ISSUE:

The issue 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 that: The claimant was hired on October 9, 2006, as a full-time cashier. The claimant signed for receipt of the employer's rules, policies and regulations on October 9, 2006. The employer issued the claimant written warnings on February 12 and July 14, 2007, for having customers drive off after getting gasoline.

On August 28, 2007, the claimant was working when an off duty employee stopped by to get two large pizzas, a breaded chicken sandwich and a twelve pack of pop. Also about this same time an assistant manager smudged the windows at work. The claimant had just received a compliment about how clean the windows were and then the assistant manager put her hands on them.

The claimant was getting ready to go outside for a smoke break and held the door open for the co-worker. She told the co-worker that she could pay for the items after they had a cigarette break. Shortly after going outside a number of vehicles pulled into the parking lot. There was a search for a local man who was found dead three blocks from the parking lot. The two forgot about paying for the food.

On August 29, 2007, the claimant asked the manager to view the surveillance tape of the night before so the manager could see the assistant manager's antics. While watching the manager

saw that the off duty worker did not pay the claimant for the food items. The employer terminated the claimant for not taking payment for the employer's items.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has failed to provide sufficient evidence of misconduct in this case. The claimant's actions on August 28, 2007, were careless but there was no wrongful intent. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 26, 2007 decision (reference 02) is affirmed. The employer discharged the claimant. Misconduct has not been proven. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs