

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY HEABERLIN
Claimant

APPEAL NO: 12A-UI-10211-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/08/12
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Ashley Heaberlin (claimant) appealed an unemployment insurance decision dated August 16, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Casey's Marketing Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2012. The claimant participated in the hearing. The employer participated through Jaime Foster, area supervisor. Employer's Exhibits One through Five were admitted into evidence. 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:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed full-time from February 23, 2005 through July 10, 2012, when she was discharged for repeatedly failing to follow directives and not performing her job duties. She was hired as a clerk, was promoted to an assistant manager, and then advanced to a store manager, which was the position she held at the time of termination. As the manager, she was responsible for investigating cash shortages over \$5.00 and lottery/cigarette shortages of more than five within 24 hours.

In March and April 2012, the claimant's store had \$104.00 in cash shortages and eight missing packs of cigarettes. There was \$95.00 worth of lotto tickets that had been printed but not paid for or ran through the register. There were 13 missing lottery tickets in March 2012 and \$25.00 worth of missing lottery tickets in April 2012. The regional manager issued the claimant verbal warnings, reminded her to investigate cash shortages and taught her how to find missing lottery tickets. Cash shortages of over \$5.00 should also be reported to the supervisor that same day.

In May and June 2012, there was a loss of \$67.00 in lottery tickets, 19 missing cigarette packs, and 41 lotto tickets had been taken without payment. A formal written warning was issued to the claimant on June 11, 2012. The claimant's store was \$98.84 short on May 6, 2012 and \$98.70 short on May 8, 2012. She had not looked into the shortages as required and the regional manager had to direct her to do so.

A second written warning was issued on June 22, 2012 for the same issues. During the time period from June 2, 2012 through June 15, 2012, there was \$58.00 worth of missing lottery tickets. This amount was broken down by the following dates, tickets and cash values: "6/2-8 for \$22; 6/3-7 for \$15; 6/12-1 for \$20; 6/15-3 for \$9." Again, the claimant did not look into any of these shortages and was directed to complete her duties as required. On the following day, the claimant's store had a cash shortage of \$120.07 and she did not investigate it or report it.

On July 6, 2012, the area manager went to pick up the claimant's "shorts" for the month of June 2012 and the total amount was \$221.11. The claimant had not looked into the shortages, so the area manager directed her to do so by July 9, 2012. When the area manager returned on July 9, 2012, the claimant had not completed her investigation because she said she did not have time and believed the supervisor was coming in later in the day.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

Iowa Code § 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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on July 10, 2012 for repeatedly failing to follow directives and not performing her job duties. She had been advised her job was in jeopardy as a result of her failure to perform her job duties as required. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant's failure to do her work as required is a violation of the duties and responsibilities the employer has the right to expect of an employee. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 16, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw