

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SABRENN A R ROSS
Claimant

APPEAL NO. 08A-UI-08393-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 08/17/08 R: 01
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Casey's Marketing Company (Casey's) filed an appeal from a representative's decision dated September 11, 2008, reference 01, which held that no disqualification would be imposed regarding Sabrenna Ross' separation from employment. After due notice was issued, a hearing was held by telephone on October 6, 2008. Ms. Ross participated personally. The employer participated by Sara Luebbert, Supervisor. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Ross was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ross was employed by Casey's from June 5, 2003 until August 20, 2008. She was last employed full time as a manager, a position she held since approximately January of 2005. She was discharged for theft.

The employer visited Ms. Ross' store on or about August 18, 2008 because of concerns with the low gross profit on cigarettes and other items. In its investigation, the employer viewed video surveillance tapes and register detail tapes. It was discovered that Ms. Ross was ringing up cigarette purchases and receiving the appropriate payment from customers. She would then void the cigarette sale and pocket the money represented by the sale. The store has two registers and employees are to only conduct transactions on the register assigned to them. The employer discovered from 15 to 20 transactions on Ms. Ross' register where she voided sales after receiving money from customers for the items voided.

When confronted by the employer on August 20, Ms. Ross indicated that one of the transactions had been voided because the cigarettes were inadvertently scanned a second time. The register detail for the transaction did not show the cigarettes having been scanned twice.

Ms. Ross could only indicate that she did not know how the voided transactions occurred. The employer believed her actions were deliberate and intentional and, therefore, discharged her on August 20, 2008. The above matter was the sole reason for the separation. Criminal charges have been filed but were still pending as of the date of the hearing.

Ms. Ross filed a claim for job insurance benefits effective August 17, 2008. She has received a total of \$1,765.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Ross was discharged for theft. She voided sales and pocketed the money represented by the sales. She did so on from 15 to 20 occasions over the course of a month-and-a-half. Theft is clearly contrary to the type of behavior an employer has the right to expect. For this reason, it is concluded that substantial misconduct has been established. Accordingly, benefits are denied.

Ms. Ross has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If an overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. Benefits will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if Ms. Ross will be required to repay benefits already received.

DECISION:

The representative's decision dated September 11, 2008, reference 01, is hereby reversed. Ms. Ross was discharged for misconduct in connection with her employment with Casey's. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims to determine if Ms. Ross will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw