

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN R CARNES

Claimant

APPEAL NO. 12A-UI-13349-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/14/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lynn Carnes (claimant) appealed a representative's November 5, 2012 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Casey's Marketing Company (employer) for dishonesty in connection with her work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 6, 2012. The claimant participated personally. The employer participated by Millie Vroegh, Area Supervisor.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 July 19, 2010, as a full-time manager. The claimant signed for receipt of the employer's handbook on July 19, 2010. The claimant understood that customers were to present bottles and cans to the person at the register. The person at the register was to count the items and give the customer the correct amount for deposit. The claimant's area supervisor instructed the claimant not to bring her personal cans and bottles to the store where the claimant worked.

On October 3, 2012, the claimant brought her personal cans and bottles to the store where she worked. She took them to the shed in the back and did not present them to the cashier for counting. The claimant went to the cashier who was a subordinate and told her to give her \$40.00 in cash for the bottles and cans she put in the shed. The cashier followed the claimant's instructions.

On October 11, 2012, the claimant told her supervisor that her children took the bottles and cans into the store. The claimant told the supervisor she discovered this after she viewed the video tape of the transaction. Then the claimant told the supervisor she lied about the story. On October 11, 2012, the area supervisor issued the claimant a suspension. On October 15, 2012, the employer terminated the claimant for failing to follow the employer's instructions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was 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). 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). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. She did not follow instructions when she brought her personal cans and bottles to her work place, when she put the items in the shed without letting the cashier count them, when she instructed the cashier to break the rules, and when she lied to her supervisor. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 5, 2012 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from

work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css