

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

VICKIE L POLK

Claimant,

and

CASEY'S MARKETING CO

Employer.

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HEARING NUMBER: 14B-UI-03386

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Vickie L. Polk, worked for Casey's Marketing Co. from October 18, 2012 through February 28, 2014 as a full-time cashier. At the start of her hire, the Employer issued a Personnel Handbook, Conditions of Employment Form and Selling Age Restricted Products document for which she signed in acknowledgement of receipt on October 18, 2012. (10:08-10:06; 8:19; Exhibits 2-4)

If a patron looked younger than 26 years old (for tobacco) or 21 years of age (for alcohol), the Claimant was responsible to request proper identification whenever she sold an 'age-restricted' product (alcohol or tobacco) by scanning their age into the register to determine if the patron is of legal age to purchase such items. (10:03-9:00) The Employer's policy provides if an employee fails a compliance check performed by local law enforcement, that employee is immediately terminated. (10:19-10:12; 8:19)

The local police department performed a compliance check on February 28, 2014 at a time when the store was busy, and a snowstorm was pending. (10:52) The Claimant was the only employee at the register and three other employees were in the kitchen. (6:56-6:20) The Claimant sold a can of beer to a patron who was 20 years old. (4:4:25:4:19) She did not check the patron's identification because she was "incredibly busy," as there were several complaining customers waiting in line. (4:15-3:27) The police officer issued her a citation for having sold the beer to a minor. (10:48-10:37; 4:45) Ms. Polk was terminated for failing the compliance check. (11:20-11:00; 8:30-8:19; Exhibit 1, 5)

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

There is no dispute that the Claimant had knowledge of the Employer's policy regarding age-restricted sales based on her own admission, the Employer's testimony, as well as the document bearing her signature. (Exhibit 4) The Claimant's argument that the store was very busy and that she was the only employee working the cash register does not diminish her responsibility in light of the Employer's rule. The policy provides no exception as in any type of progressive discipline, i.e., warning for a first-time offender. Plus, there is no definitive evidence to support that none of the other three employees could have assisted her.

Ms. Polk's failure to check the minor's ID could have resulted in both criminal and civil charges; put the Employer's liquor license in jeopardy, as well as resulted in costly fines, all of which go directly against the Employer's interests. The Employer has a right to expect strict compliance of this policy given the negative impact noncompliance could potentially bring. Based on this record, we conclude that the Employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated April 22, 2014 is **REVERSED**. The Claimant was discharged for disqualifying misconduct. Accordingly, the Claimant is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Kim D. Schmett

Ashley R. Koopmans

DISSENTING OPINION OF CLOYD (ROBBY) ROBINSON:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

Cloyd (Robby) Robinson

AMG/fnv