

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ETTA M HAMLETT**

Claimant

**APPEAL NO. 13A-UI-04348-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING CO**

Employer

**OC: 03/03/13**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 1, 2013 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 21, 2013. Claimant participated and was represented by John Carr, Attorney at Law. Employer participated through manager Laurie Becker.

**ISSUE:**

Was the claimant discharged for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a cashier from 2005 and was separated from employment on February 26, 2013. She was fired because a person who pumped gas drove off without paying for it. Claimant was the only cashier on duty. The store has an 'island' of a row of three pumps parallel to the store. Pump one is on the far side of the island and farthest to the left from the cashier's visual perspective. A car drove up to pump one, which is the most difficult for a cashier to see and license plates are not visible from that perspective. Claimant spoke to the driver and pushed a key to allow gas to be pumped without a credit or debit card. She was busy so had no recollection about any details of the car size or color. The employer has a security camera that records the gas island but the recording is only visible from the locked office. While claimant was helping customers and speaking with a computer repair person a white SUV parked parallel to the store in front of the cashier area window and blocked her view of pump one. The employer allows parking in front of the cashier area window. About two minutes later when the SUV left she noticed the car was gone and the pump record was not cleared off the screen. As required, she wrote a note for the manager detailing what information she had about the drive-off. She did not have enough detailed information to call the police. The manager reviewed the video of the gas island and could not determine enough details to report the drive-off theft to the police either. The employer had no information about prior warnings.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was the result of a combination of factors, all under the

employer's control. The employer allowed parking in the area that would block the cashier's view of the pumps, it does not have video feed of the cameras for the cashier to watch if the window view is blocked, there was only one cashier on duty who was expected to perform multiple tasks at once and the island is positioned so that cars are less visible on the far side of the island. The employer was not even able to provide police a description of the vehicle, even with more leisurely review of the surveillance video. Thus, it has not met the burden of proof to establish that claimant engaged in any act of misconduct. Benefits are allowed.

**DECISION:**

The April 1, 2013 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs