

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY J UTLEY

Claimant

APPEAL NO. 08O-03572-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

**OC: 01/06/08 R: 04
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Beverly Utley, filed an appeal from a decision dated January 30, 2008, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 29, 2008. The claimant participated on her own behalf. The employer, Casey's, participated by Manager Karrie Osborn.

The Employment Appeal Board remanded the case for the limited purpose of accepting the claimant's exhibits into the record because they had not been submitted in a timely manner for the previous hearing. Exhibit A was admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Beverly Utley was employed by Casey's from February 13, 2001 until January 8, 2008, as a full-time pizza maker. The claimant signed an acknowledgement she had read the employee handbook and a copy was available in the store at all times.

On June 25, 2002, she received a written warning for writing a bad check. She had 30 days to make payment on the check, which she did. A second bad check generated another written warning on September 6, 2006. That warning also advised her she was not allowed to write any more checks at that Casey's store.

On January 5, 2008, Manager Karrie Osborn received the twice-weekly bad check list and Ms. Utley's name was on it. A check had been written at that store and returned by the bank for insufficient funds for \$72.46. Ms. Utley insisted she had written the check for only \$25.00 and the bank had paid it. The exhibits submitted at the second hearing shows the check was for \$25.00 and was honored by the financial institution. However, she had violated the provision of

her final warning by writing the check in the first place, regardless of whether it had been returned for insufficient funds

REASONING AND CONCLUSIONS OF LAW:

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 claimant was allowed in this hearing to submit exhibits which were not submitted in a timely manner for the previous hearing. The exhibit does show her financial institution did honor the \$25.00 check she wrote to Casey's. However, this is irrelevant. The violation for which she was fired was writing the check in the first place after receiving two warnings that she was not to write any more checks to the store.

The claimant had been advised her job was in jeopardy if she wrote any more checks to the Casey's store where she worked. While she insists none of her checks had been returned for insufficient funds subsequent to the one in 2006, she did not deny continuing to write checks at the Casey's where she worked. The employer was not aware of her continuing to write checks until one was listed as returned for insufficient funds. This was a violation of explicit instructions she received in her final disciplinary action, and constitutes a deliberate refusal to follow the instructions of a supervisor and the company policies. It is conduct not in the best interests of the employer and the claimant is disqualified.

DECISION:

The representative's decision of January 30, 2008, reference 01, is affirmed. Beverly Utley is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs