

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RENEE R SCHAFER
Claimant

APPEAL NO. 08A-UI-08206-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/10/08 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 4, 2008, reference 01, which held that no disqualification would be imposed regarding Renee Schafer's separation from employment. After due notice was issued, a hearing was held by telephone on October 2, 2008. Ms. Schafer participated personally. The employer participated by Micky Gavin, Manager. Exhibit One was admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Schafer 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. Schafer's last period of employment with Casey's was from January 13 until August 14, 2008 as a full-time cook and cashier. She was discharged for violating the employer's policies regarding the employee discount.

On August 13, Micky Gavin, manager, overheard Ms. Schafer tell the other cashier that she would ring up that particular customer's order because it was a friend. There were no other customers in the store at the time. Ms. Schafer's work station at that time was the kitchen. Ms. Gavin did not make anything of what she overheard at the time but later checked the register's tape concerning the transaction. She determined that Ms. Schafer had given the individual an employee discount of 50 percent even though he was not entitled to it. In order to give a discount, the cashier has to page through different register screens other than the one used for non-employee purchases. The purchase at issue in this matter was a slice of pizza and a Red Bull beverage. The employer reviewed the transaction on its surveillance tape.

When confronted by Ms. Gavin on August 14, Ms. Schafer did not admit or deny the accusation. She did not say anything. She was shown the transaction on the register tape. Her actions

were in violation of the employer's written standards. The policy provides for immediate disciplinary action up to and including discharge for violations. As a result of her conduct, Ms. Schafer was discharged on August 14, 2008. The above matter was the sole reason for her discharge.

Ms. Schafer filed a claim for job insurance benefits effective August 10, 2008. She has received a total of \$997.00 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. Schafer was discharged for violating the employer's policy regarding the employee discount. Ms. Schafer asked to handle the transaction even though the cashier on duty was not busy as there were no customers present. She testified during the hearing that one has to go through to different screens in order to give a discount. She acknowledged that the register tape Ms. Gavin showed her indicated a discount for the purchase she rang up. The fact that Ms. Schafer specifically requested to ring up the purchase and the fact that she had to go through to different screens to effect the discount convince the administrative law judge that she deliberately and intentionally gave a discount to the customer.

Ms. Schafer testified that the customer at issue was not a friend but was a regular customer. She did not indicate that she was unaware of the policy regarding the employee discount. She did not offer any reason why she may have felt this individual was entitled to a discount. Her conduct in giving an unauthorized discount constituted theft as it deprived the employer of funds to which it was entitled. The fact that the amount involved was relatively minor is irrelevant. Theft in any amount is clearly contrary to the standards an employer has the right to expect. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. As such benefits are denied.

Ms. Schafer 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 receiving benefits. This matter shall be remanded to Claims to determine if Ms. Schafer will be required to repay benefits already received.

DECISION:

The representative's decision dated September 4, 2008, reference 01, is hereby reversed. Ms. Schafer was discharged by Casey's for misconduct. 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. Schafer will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs