

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NELLY L EDWARDS**

Claimant

**APPEAL NO. 16A-UI-12449-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 10/23/16**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's November 8, 2016, decision (reference 01) that concluded Nelly Edwards (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 8, 2016. The claimant participated personally. The employer participated by Christine Bussy, Store Manager; Mary Hanrahan, Supervisor; and Stefanie Rawles, Lead Unemployment Insurance Consultant. The employer offered and Exhibit 1 was received into evidence. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was received into evidence.

**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 June 4, 2013, and at the end of her employment she was working as a full-time second assistant manager. The claimant signed for receipt of the employer's handbook on June 4, 2013. The handbook prohibits supervisors from regularly socializing with subordinate employees outside of worktime. The approximately sixteen employees, including supervisors, got together from time to time for food, movies, and other non-work activities. On June 3, 2016, the employer issued the claimant a written warning for inappropriate conduct. The warning indicated that further infractions could result in the claimant's termination from employment.

In late July 2016, the claimant was upset and crying due to personal reasons. A subordinate saw her, wanted to comfort her, and gave her a hug. The two kissed. The claimant immediately told the subordinate it was a mistake and it could not happen again. The claimant told the employer about two days later. She was having problems because the subordinate called and sent her texts. The employer spoke to the subordinate about the situation because

he was causing problems at work. The claimant was not causing any problems at work. The claimant was moved to a different shift so the two did not work together.

In September 2016, the employer asked her questions about what happened in July 2016. On September 13, 2016, the claimant wrote out a statement for the employer. On September 28, 2016, the employer terminated the claimant for the kiss at the end of July 2016.

The claimant filed for unemployment insurance benefits with an effective date of November 8, 2016. The employer provided the name of Larry Porter as the person who would participate in the fact-finding interview. The employer provided the number for him. The fact finder called Mr. Porter but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. No documents were provided by the employer to the fact finder at the time of the interview. Some hours later, documents were entered on-line but not faxed or scanned to the number/address provided to the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred and was communicated to the employer at the end of July 2016. The claimant was not discharged until September 28, 2016. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

**DECISION:**

The representative's November 8, 2016, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs