

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CAYLIE J HAWKINS**  
Claimant

**APPEAL NO. 14A-UI-03823-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 03/09/14**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated March 20, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 9, 2014, by telephone conference call. The claimant participated personally. Employer participated by Stephanie Frantz, Store Manager. Lori Cesleksi, Unemployment Insurance Consultant, was also a witness for the employer. Exhibits 1-5 were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was a part-time cashier at the employer's store located in Donnelson, Iowa. The claimant was hired on September 30, 2013. Her last day of work was February 28, 2014. She was terminated on February 28, 2014.

The incident that led to the claimant's termination occurred on February 1, 2014. The claimant sold a dozen donuts to another employee and used the employee discount when ringing up the sale. The employer has a policy, of which the claimant was aware, that the employee discount can only be used for products that are consumed on the employer's premises. The claimant did not realize that the other employee was going to take the donuts home.

The employer found out about the incident on February 27, 2014, when surveillance tapes were reviewed. The employer terminated the claimant because she sold the donuts with an employee discount.

## 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant did violate a store rule but she did not realize that the other employee was planning to take the donuts home instead of eating them on the premises. The donuts were not purchased at a time when the other employee was leaving for home. Nothing was said that might alert the claimant to the fact that the other employees were going to take the donuts from the premises. Given these circumstances, the claimant did not know that the other employee could not use the employee discount. There is no showing of misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated March 20, 2014, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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