

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER N HILL
Claimant

APPEAL NO. 11A-UI-14525-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 10/09/11
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the October 28, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 1, 2011. Claimant participated. Employer participated through area supervisor Donna Kolsrud. Employer's Exhibit 1 (pages 1 – 7) was admitted to the record. The two CD recordings were not included in the record because they were in a format claimant could not watch.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

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/pizza cook and was separated from employment on October 11, 2011. The employer investigated after a register shortage and reviewed surveillance camera recordings which revealed her allegedly taking money on October 1. Claimant exchanged coins from her purse for paper bills. There were other amounts missing from the same shift, during which another employee had access to the register. The employer declined to show her the tapes at discharge.

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 § 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 Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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 employer has not met the burden of proof to establish that claimant engaged in theft or any other final incident of misconduct. Benefits are allowed.

DECISION:

The October 28, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed. The benefits withheld shall be paid, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs