

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA G HABEGER
Claimant

APPEAL 20A-UI-01140-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 12/29/19
Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's January 30, 2020, decision (reference 02) that concluded Amanda Habeger (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 February 24, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Alicia Hohl, Store Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

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 May 13, 2019, as a full-time store employee. She signed for receipt of the employer's handbook on her date of hire. The store manager was unsure whether the handbook had a break policy, if the policy covered breaks, or whether breaks were allowed. The store manager was nice to her workers and let them sit down but they should not expect to get a break.

The employer issued the claimant warnings for attendance issues on November 30 and December 9, 2019. The claimant left early on November 24, 26, 29, December 5, and 6, 2019, because of lack of business. She was absent because her child was ill on November 27, 2019. The employer had no specific information regarding reporting of the absences or the reasons for the absences. The employer notified the claimant that further infractions could result in termination from employment.

On December 18, 2019, the claimant was scheduled to work from 1:00 p.m. to 9:00 p.m. She assumed she was entitled to a break. She was not inside the building from 6:15 p.m. to 6:37 p.m., twenty-two minutes, but on the employer's premises. The claimant did not clock out during this time.

On December 19, 2019, the employer questioned the claimant about leaving the premises. The claimant indicated she did not leave the employer's premises while on break and did not know she was supposed to clock out. The employer terminated her for time theft when she did not clock out for break on December 18, 2019.

The claimant filed for unemployment insurance benefits with an effective date of December 29, 2019, and received \$2,254.00 in benefits after the separation from employment. The employer provided the name and number of Shania Angel as the person who would participate in the fact-finding interview on January 29, 2020. The fact finder called but Shania Angel but 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's witness did not respond to the message. The employer provided some documents for the fact finding interview. The employer provided documents in lieu of personal participation in the fact finding interview. The employer did not identify particular circumstances that caused the separation.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously given the claimant a policy about breaks or warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 30, 2020, decision (reference 02) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn