

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHERIAN M COLLINS
230 S DUBUQUE ST
PO BOX 182
SOLON IA 52333

CASEYS MARKETING CO
CASEYS GENERAL STORE
c/o TALX UC EXPRESS
3455 MILL RUN DR
HILLIARD OH 43026

Appeal Number: 05A-UI-04848-HT
OC: 04/10/05 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Sherian M. Collins, filed an appeal from a decision dated April 28, 2005, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on May 26, 2005. The claimant participated on her own behalf and was represented by Iowa Legal Services in the person of Derrick Johnson. The employer, Casey's General Store (Casey's), participated by Manager Jill Duncan.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Sherian M. Collins was employed by Casey's from February 1995 until March 31, 2005. She was a full-time clerk.

On February 2, 2005, the claimant left the store without paying for a sandwich. Manager Jill Duncan was apprised of this by the assistant manager and reviewed the video tapes on February 3, 2005. The claimant was either notified by someone else in the store, or discovered the error herself, and called the manager the evening of February 3, 2005, to acknowledge she had not paid and tendered the money the next day when she came on shift.

Because the store had been suffering inventory loss, a meeting was held with all the employees on March 15, 2005. The problem was discussed and all employees were notified Casey's had a zero tolerance policy. Discharge would result for anyone who was found to have left the premises without paying for items consumed in the store or taken from the store.

On March 19, 2005, the claimant was leaving at the end of her shift and purchased a newspaper, some lottery tickets and another small item, plus a carton of cigarettes. She was rung up by another clerk and the total was \$7.44. She wrote the check for \$8.00. The carton of cigarettes alone cost \$17.44. A tobacco audit done that evening revealed the shortage of a carton of cigarettes and Ms. Duncan recognized it as being the brand Ms. Collins smoked. She reviewed the video tapes and saw the claimant bring the carton to the check out. A review of the register journal showed the amount of the purchase and it did not include the cigarettes.

The claimant was notified on March 21, 2005, that she was fired for not paying for the cigarettes. Ms. Collins asserts she was suffering from a migraine and was "not paying attention" to know that she had been charged an amount which was substantially lower than she should have paid for all the items.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant, and all other employees, had been advised their jobs would be ended if they failed to pay for any items they took. In spite of the warning, four days later the claimant took a carton of cigarettes from the store without paying for them. The administrative law judge is not convinced by her assertion it was a migraine which prevented her from realizing the total for her purchase was \$10.00 less than it should have been. In fact, the total of the check was half the cost of the cigarettes alone. Ms. Collins was competent to work her shift that day and if that was the case, the administrative law judge considers she would have been aware enough to realize the total of her purchase was substantially incorrect. This is not the difference of a few cents or even a few dollars on a large purchase, but an amount which was less than half of that a single item should have cost. The claimant should have known the total was incorrect and her failure to pay for the items was a violation of a known company rule. This is conduct not in the best interests of the employer and she is disqualified.

DECISION:

The representative's decision of April 28, 2005, reference 01, is affirmed. Sherian Collins is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

bgh/sc