

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARGARET L ROSE

Claimant

APPEAL NO. 13A-UI-06527-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/05/13

Claimant: Appellant (2)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Margaret Rose, filed an appeal from a decision dated May 22, 2013, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on July 9, 2013. The claimant participated on her own behalf. The employer, Casey's, participated by Store Manager Buffy Willis.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Margaret Rose was employed by Casey's from November 27, 2007 until May 4, 2013 as a full-time assistant manager. At the time of hire she received a copy of the employer's policies and rules. Employees may purchase food at a discount only if it is purchased while on duty and consumed prior to the end of the shift.

On May 3, 2013, the claimant purchased a turkey wrap which she partially consumed before the end of her shift. As she did not eat all of it she threw it out with the rest of the store garbage before she went home. Another employee notified Store Manager Buffy Willis the claimant might have taken food home after buying it with the discount. Company policy calls for discharge even for one incident of violation of this policy. The employer watched the video surveillance footage and saw only that Ms. Rose took the wrap out with her when she took out the store garbage. She was discharged by Ms. Willis on May 4, 2013, for violation of the employee discount policy.

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer had no firm evidence the wrap was not thrown out with the rest of the trash. The video surveillance footage only covers the inside of the store.

The administrative law judge does not find the employer's testimony to be any more or less credible than that of the claimant. The testimony being equal it must be resolved that the employer failed to meet its burden of proof by a preponderance of the evidence to establish substantial, job-related misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of May 22, 2013, reference 01, is reversed. Margaret Rose is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs