

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANGIE M GELTZ**

Claimant

**APPEAL NO: 13A-UI-12246-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 09/29/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated October 22, 2011, reference 01, that held she was discharged for misconduct on September 29, 2013, and benefits are denied. A telephone hearing was held on November 21, 2013. The claimant and witnesses, Scott Werderman, Customer; Joan Hopkins, Customer; and Former Employee, Leslie Darrow, participated. Mary Day, Area Supervisor, participated for the employer. Employer Exhibits 1 and 2 was received as evidence.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on February 12, 2009, and last worked for the employer as a full-time second assistant on September 30, 2013. The employer has a check handling policy that applies to employees as customers making payment by personal check. Postdated checks are not allowed. Checks are to be processed at the end of each business day. No checks are to be held. Employees are limited to writing checks for no more than \$10.00 over the amount of purchase. Employees should use the store check reader for immediate debit to their account and credit payment to the employer.

The home office sent a September 23 e-mail to the area supervisor it had detected some large amount of personal checks written by the store manager and it also had a concern about claimant. It provided a check list identifying claimant personal checks written from April through August 28. The list showed claimant checks for more than \$10.00 and checks that were not immediately debited.

The employer terminated the store manager and claimant for violation of the check handling policy. Claimant denies any policy violation. She had received no prior warning. She stated

the store check reader had persistent problems that prevented immediate check account debiting and employer credit. She said other employees would handle the processing of her personal checks.

## **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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes employer established claimant was discharged for misconduct on September 30, 2013 for check handling policy violation. The employer must establish recent conduct to deny benefits.

The employer home office had the personal check information for the period from April through August 2013 and yet it did not present it to the area supervisor for enforcement until a week before claimant was discharged on September 23. Claimant had received no prior warning about personal check writing and/or violation of the check handling policy. The employer failed

to establish enforcement of the policy due to a lack warning though it had all the information it needed for months.

Claimant and her witnesses offered testimony the employer failed to enforce the policy. Job disqualifying misconduct is not established as there is no current act.

**DECISION:**

The department decision dated October 22, 2013, reference 01, is reversed. The claimant was discharged for misconduct on September 30, 2013. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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