

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNDSAY M GABEL
Claimant

APPEAL NO. 11A-UI-12446-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 08/21/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated September 13, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on October 17, 2011. Claimant participated personally. The employer participated by Ms. Sandy Hawkins, Area Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Lyndsay Gabel was employed by Casey's Marketing Company from July 10, 2010 until August 23, 2011 when she was discharged from employment. Ms. Gabel most recently held the position of full-time store manager and was paid by salary. Her immediate supervisor was Sandy Hawkins.

The claimant and a new assistant manager trainee were discharged from employment based upon a bookkeeping error and cash shortage that took place on August 14, 2011. On that date the claimant was attempting to train a new assistant manager and having the new assistant manager assist her in preparing a bookkeeping report and cash deposit for a number of business days. The claimant had received no specific training for these duties although she had requested it and had not been given a copy of the company's policies and procedures for bookkeeping and cash deposits. Ms. Gabel believed that she had correctly accounted for the funds and correctly withheld a \$970.00 "buy back" before transferring the funds to the assistant manager.

Subsequently it was determined that the \$970.00 buy back had not been removed and the deposit was deficient that amount.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. See 871 IAC 24.32(4). Misconduct must be "substantial" in order to warrant the denial of job insurance benefits. When based upon carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

Inasmuch as the evidence in the record establishes that Ms. Gabel was given insufficient training and was not provided a policy and procedure handbook, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing intentional, disqualifying misconduct on the part of the claimant. Ms. Gabel was engaged in operating a newly opened store with untrained employees. Although the claimant had requested assistance and training on bookkeeping and deposits, the claimant's requests had gone unheeded. The evidence in the record does not establish intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 13, 2011, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs