

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA FUNKE**

Claimant

**APPEAL NO: 12A-UI-12438-BT**

**ADMINISTRATIVE LAW JUDGE  
NUNC PRO TUNC DECISION**

**CASEY'S MARKETING COMPANY**

**CASEY'S GENERAL STORES**

Employer

**OC: 09/09/12**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Amanda Funke (claimant) appealed an unemployment insurance decision dated October 9, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Casey's Marketing Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 13, 2012. The claimant participated in the hearing. The employer participated through Wendy Downs, area supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**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 October 3, 2006 as a full-time cashier. She transferred to Edgewood in July 2007 and became the assistant manager in December 2007. The claimant was placed into the manager position on October 1, 2011 and the employer discharged her on September 1, 2012 for not carrying out the manager's duties.

The employer issued the claimant three written corrective action statements. The first was written on July 7, 2012 because she was taking pictures of co-employees and putting the pictures on Facebook. A second warning was issued on August 13, 2012 because three pumps were down. The employer could not provide the dates the pumps went down and/or any other information regarding the pumps being down. A third warning was issued on August 29, 2012 because the claimant did not complete her daily tasks and did not issue corrective actions. The employer witness was asked about the daily tasks and she testified the claimant did not put away her daily book work, did not complete the gas delivery logs, and did not do her daily

cleaning. The employer witness was asked about dates and she said it was every day. No further information was provided by the employer witness.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on September 1, 2012 for not carrying out the duties of a manager. Except for providing the dates of three warnings, the employer witness failed to provide anything more than general allegations of the claimant's failure to carry out her job duties. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated October 9, 2012, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw/kjw