

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEAN OUDEKERK**

Claimant

**APPEAL NO: 13A-UI-12528-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 10/13/13**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 1, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 3, 2013. The claimant participated in the hearing. Rebecca Kime, Store Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time kitchen/cashier for Casey's from January 17, 2012 to October 10, 2013. She was discharged for confronting a customer who made a complaint in a rude and inappropriate manner.

On October 5, 2013, a regular customer complained to the cashier about his pizza and indicated he had experienced several problems with his pizzas and food orders in the last few months. The cashier reported the situation to Store Manager Rebecca Kime and she spoke to the customer October 6, 2013. He told Ms. Kime he had been unhappy with his pizza orders when the claimant prepared his food during the last few months as his orders were often incorrect or the food was of poor quality. Ms. Kime also received several other customer complaints about the claimant between October 6, 2013 and October 9, 2013, when Ms. Kime issued a written warning to the claimant. In addition to the food order and quality issues, customers and staff complained that the claimant was rude and her boyfriend was often hanging around the store. Ms. Kime had spoken to the claimant about her boyfriend coming in to the store when the claimant was working but the situation continued. The October 9, 2013, warning cited the quality of food prepared by the claimant and other customer complaints. The claimant refused to sign the warning, which stated that any further incidents regarding inappropriate treatment of customers and/or staff would result in immediate termination of employment.

On October 10, 2013, the customer who made the complaint that prompted the warning came into the store and the claimant confronted him about his complaint and was very loud and rude, causing the cashier, who was shocked by the claimant's behavior, to apologize to him. The claimant told the customer he would not have to worry about her making his pizzas in the future because due to his complaint she would be looking for another job. She indicated he should be happy because she would no longer be making his pizzas as she was "gone." She also stated the employer could "fire me now. Let them because I will just collect unemployment." When Ms. Kime was notified of that incident later that week she discussed the situation with the claimant and while the claimant agreed she talked to the customer about his complaint against her and may have been loud given where she was standing in relation to the customer in the store, she testified she was trying to repair the relationship with the customer and retain him as a customer. The employer terminated the claimant's employment October 10, 2013, for confronting a customer in a rude, loud and inappropriate manner in violation of the employer's policy after being warned one day before the final incident.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

While the claimant denies confronting the customer who complained about her to the employer in a rude, inappropriate and unprofessional manner, the cashier who witnessed the claimant's outburst was "shocked" by her behavior. Although the claimant testified she was trying to apologize to the customer and keep him as a customer, her actions belie her words. A customer should feel free to make a complaint without fear of being confronted about his complaint the next time he enters the store. If customers did not believe they would be provided some anonymity following a complaint they would be hesitant to make complaints that needed to be made, especially in a small town environment where the chances that the parties may know each other are greater and there may be less options for those specific products the customer is seeking. Additionally, as a clerk, it was not the claimant's place to "apologize" to the customer and try to keep him as a return customer. That job is the manager's responsibility and Ms. Kime had already spoken with the customer about the situation.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The November 1, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css