

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FAWN S BEARD
Claimant

APPEAL NO. 12A-UI-02135-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 01/15/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 22, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on March 20, 2012. Claimant participated. Employer participated through store manager, Billie Petry.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assistant store manager from March 2010 and was separated from employment on January 16, 2012. On January 8, her day off, she went to the donut case and took some, went to the kitchen and frosted her own donuts, went to the pizza warmer and put a pizza in a box, and then took a soda and left the store without paying for them. She was not supposed to be in the kitchen on her day off. Claimant believed she had an arrangement with Barb to pay for the items since she did not have her wallet. She did not make sure Barb paid for the items before she left the store. Petry reviewed tapes on January 13 and noticed this scenario.

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 § 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 presented substantial and credible evidence and claimant admits that she removed food from the store before it was paid for, whether by Barb or herself. This is theft and is disqualifying misconduct in spite of no prior warning.

DECISION:

The February 22, 2012 (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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css