

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VAL L TRUAX**  
Claimant

**APPEAL NO. 11A-UI-00806-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S GENERAL STORES**  
Employer

**OC: 10/31/10**  
**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

Casey's General Stores filed a timely appeal from a representative's decision dated January 8, 2011, reference 01, that held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on March 16, 2011. The claimant participated personally. Participating as a witness for the claimant was Mr. Terry Truax, the claimant's husband, and subpoenaed witness Ms. Jackie Goffinette, hourly employee. The employer participated by Mary Hanrahan, area supervisor. Employer's Exhibits One through Five were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Val Truax was employed by Casey's General Stores from July 14, 2008, until October 22, 2010, when she was discharged for insubordination. Ms. Truax worked as a full-time assistant manager and was paid by the hour. The claimant worked under the immediate supervision of the store manager.

Ms. Truax was discharged on October 22, 2010, when she left a disciplinary meeting and refused to return even though the claimant was informed that failure to return to the meeting would result in her termination from employment. The employer proposed to issue Ms. Truax a corrective warning because the employer believed that the claimant had failed to personally contact the store manager to report that an employee had violated company policy by selling tobacco or alcohol products to an underage person during a "sting operation." Under company policy, the assistant manager is required to immediately notify the manager if a sting violation occurs. Because the employer believed that Ms. Truax had not followed the policy, the employer proposed issuing a written warning to the claimant.

On October 22, 2010, Ms. Truax was called to a meeting with Mary Hanrahan and the store manager to discuss the infraction. During the meeting, Ms. Truax was presented the company's written warning. Ms. Truax initially thought that she was called to the meeting because the hourly employee who sold the product was to be warned and Ms. Truax was surprised when she discovered that she was to receive a warning. Ms. Truax refused to be counseled and walked out of the meeting. Ms. Hanrahan, the area supervisor, contacted the company's human resource department to determine what course of action to take at that juncture. Upon advice given by the human resource department, the area supervisor attempted to call Ms. Truax back into the meeting and informed Ms. Truax that her refusal to come back to the meeting would result in termination from employment. Although Ms. Truax was aware that continued refusal to attend the meeting would result in termination, she did not return to the meeting and was discharged.

It is the claimant's position that she was "afraid" that Ms. Hanrahan might physically assault her because Ms. Hanrahan was slapping one hand into the palm of the other hand while speaking to Ms. Truax. It is the claimant's further position that she felt that she was being retaliated against because she had previously gone up the chain of command to complain about the store manager.

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

The question before the administrative law judge is whether the evidence in the record establishes sufficient evidence to warrant the denial of unemployment insurance benefits. It does.

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.

The evidence in this case is disputed. The administrative law judge, having reviewed the evidence and having considered the testimony at length, finds that the employer has sustained its burden of proof in establishing that the claimant's discharge from employment took place under disqualifying conditions. In this case, company management believed that the claimant had not acted promptly in ensuring that the store manager had been informed of a sting operation that took place on the previous evening. Because the claimant had not personally informed the manager that night of the sting operation, the employer proposed issuing Ms. Truax a written warning. A meeting was held between the store manager, the area supervisor (Ms. Hanrahan), and the claimant. Because Ms. Truax did not agree with the warning, she not only refused to sign the warning but left the disciplinary meeting before it was completed. The employer gave Ms. Truax a second opportunity to maintain her employment by offering the claimant the option of returning to the meeting or being discharged. Ms. Truax elected not to return to the meeting and was therefore requested to turn in her company keys at that time.

Although Ms. Truax maintains that she did not go back to the meeting because she felt intimidated and did not sign the warning for the same reason, the evidence in the record establishes that Ms. Truax was well aware of the procedure for bringing complaints about what she considered to be unfair treatment to the attention of upper management. The claimant had done so in the past and her complaints had been addressed by the employer. The claimant thus had the option of returning to the meeting and complaining to upper management if she felt that she was being treated unfairly. The administrative law judge finds the claimant's testimony that she was in fear of personal harm to strain credibility. The test as to whether an individual believes that the action of an employer is inappropriate is not a subjective test as to whether an employee themselves feel it is objectional, but an objective test as to whether a reasonable person would have felt that it was inappropriate under similar circumstances.

The administrative law judge concludes, based upon the totality of the evidence in the record, that the claimant's refusal to attend and be responsive to a reasonable and work-related warning being issued to her showed a willful disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall

be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

**DECISION:**

The representative's decision dated January 8, 2011, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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