

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DINA M HANZELKA
Claimant

APPEAL NO. 11A-UI-02022-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 12/12/10
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 8, 2011 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 18, 2011 and continued on April 12, 2011. Claimant participated. Employer participated through Area Manager Janice Enderson. Claimant's Exhibit A was admitted to the record. Employer's Exhibit 1 was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a pizza maker/clerk and was separated from employment on August 13, 2010. The employer found marijuana in the kitchen on August 4 or 5, 2010. Claimant was off work due to medical issues from August 3 through 8, 2010. She worked August 9 on the evening shift. She reported for the mandatory meeting on August 10, 2010 at which employees were given a copy of the drug and alcohol testing policy and told if the person who left the marijuana in the kitchen did not step forward, all store employees would be tested. No one stepped forward, so all employees, including fill-in employees from other stores, were tested. The exception to testing was Pam VonFosen because she had already given her notice of intention to resign when the marijuana was found. The drug screen sample was taken on August 10, 2010. The results dated August 13, 2010 for claimant were sent to her by certified mail from the corporate office. She was also notified verbally by the testing facility medical review officer (MRO). The drug screen was positive for marijuana and THC. Claimant did not request a split sample test or otherwise contest the low-level results because of the cost.

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.

The employer has met the requirements of Iowa Code § 730.5, because the claimant received a copy of employer's drug and alcohol use policy, which was applied universally to employees at the time the marijuana was found, regardless of whether they were working, except for one individual who had already given notice to quit. The employer has also established she was tested at a certified testing facility as a result of universal testing after marijuana was found at the work site, the drug screen was positive for marijuana and THC, claimant was notified by certified mail and offered a split screen sample, and she did not request a second test of the split sample. The claimant is required to be drug free in the workplace. The violation of the known work rule constitutes misconduct. Benefits are denied.

DECISION:

The February 8, 2011 (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/kjw