

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANN L SNELLER
Claimant

APPEAL NO. 09A-UI-15922-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/20/09
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 13, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 30, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Lynnette Reekers participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a store manager from December 12, 2007, to September 20, 2009. She was informed and understood that under the employer's work rules, as manager she was required to notify her area supervisor if was not able to work as scheduled. She was also required to do a daily cigarette audit that involves doing an inventory of the cigarettes in the store.

The claimant failed to do any cigarette audits after July 28, 2009. The failure to do cigarette audits was mentioned in a store report given to the claimant in August, but the problems continued until her employment ended. The claimant did not have any reason for not completing the store audits.

The claimant was scheduled to work on September 21 starting at 4:30 a.m. She was sick and not able to work. She failed to call her area supervisor, but instead called the assistant manager to work for her. She did not have any reason for failing to call the area supervisor.

The employer discharged the claimant on September 22, 2009, for failing to do the required cigarette audits and for failing to properly notify her supervisor about her absence on September 21.

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 20, 2009. The claimant filed for and received a total of \$3,460.00 in unemployment insurance benefits for the weeks between September 20 and November 28, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule requiring her to call her supervisor if she was absent was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Likewise, her failure to perform required job duties was willful misconduct. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated October 13, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid

wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs