

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
BROOK L CHURCH Claimant CASEY'S MARKETING COMPANY Employer	APPEAL NO. 12A-UI-03867-VST ADMINISTRATIVE LAW JUDGE DECISION OC: 03/18/12 Claimant: Appellant (1)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated April 9, 2012, reference 01, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 30, 2012. Claimant participated. The employer participated by Kathy Brown, Manager. The record consists of the testimony of Kathy Brown; the testimony of Brook Church; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns and operates convenience stores. The claimant worked at a store located in Osceola, Iowa. The claimant was hired on June 8, 2011. Her last day of work was March 15, 2012. She was terminated on March 16, 2012. At the time of her termination, the claimant worked as a part-time cashier from 11:00 p.m. to 5:00 a.m.

On March 13, 2012, store operations notified the manager, Kathy Brown, that the claimant had been posting photographs on Face Book that depicted the store and the claimant while working. She took a picture of a tray of donuts and posted it. She took a picture of herself in her work smock in a restroom. This was also posted. On March 14, 2012, at 2:27 a.m. she posted the following comment: "I officially hate this stupid job." She was working at the time she made this posting.

The employer had written policies, of which the claimant was aware, that photographs of the store were absolutely prohibited. The use of cell phones during work hours was also prohibited. At a meeting four months prior to the claimant's termination, Kathy Brown reiterated to all

employees that cell phone usage was prohibited at work at all times, even on break. The claimant attended that meeting.

The claimant was terminated on March 16, 2012, for violation of the employer's policies on photographs of the workplace and cell phone usage during working hours.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer is entitled to establish reasonable work rules and can reasonably expect that employees will follow those work rules. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v.

Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990) The employer has the burden of proof to show misconduct.

The evidence in this case clearly showed that the claimant knowingly violated her employer's work rules by taking pictures of the store and then posting those pictures on Face Book. She took the pictures during working hours. She also used her cell phone during work hours and made a posting to Facebook on March 14, 2012, when she was supposed to be working. When asked why she violated these rules, she had no explanation. The administrative law judge concludes that the claimant knew the rules on photographs and cell phone usage and decided to ignore them. This is insubordination, which is misconduct. Benefits are denied.

DECISION:

The decision of the representative dated April 9, 2012, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

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