

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ROBERTA WILSON  
770 STATE ST  
GARNER IA 50438-1543

CASEY'S MARKETING COMPANY  
PO BOX 3001  
ANKENY IA 50021

CASEY'S  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04855-JTT  
OC: 04/09/06 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's filed a timely appeal from the April 28, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 22, 2006. Claimant Roberta Wilson participated and presented additional testimony from former Casey's clerk Deb Neagle. Supervisor Teresa Garrett represented the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Roberta Wilson was employed by Casey's as a full-time store manager from November 4, 1994 until April 7, 2006, when Supervisor Teresa Garrett discharged her. On April 6, Ms. Wilson notified Mr. Garrett that she had been cited by the local police chief for selling alcohol to an intoxicated person. In the voice mail message Ms. Wilson left for Ms. Garrett, she explained the

circumstances that led to the citation, which were as follows. On April 6, a regular customer went to the Casey's store three times to purchase a six-pack of beer. The customer is a stroke survivor, uses crutches, always has slurred speech and is frequently belligerent. During one of the customer's visits to the store, he told Ms. Wilson and clerk Deb Neagle that two friends were joining him to watch a ball game. Ms. Neagle did not like to be alone with the customer and, on the third visit, summoned Ms. Wilson to come to the counter while she dealt with the customer. The customer was already positioned immediately in front of the counter when Mr. Wilson arrived from the kitchen. Neither Ms. Wilson nor Ms. Neagle believed the customer was at the point of intoxication at the time they sold alcohol to the customer. After the sale was completed, Ms. Wilson assisted the customer with the door. At that time, Ms. Wilson noticed that the customer had urinated in his clothes. As Ms. Wilson held the door for the customer, the customer turned to her and told Ms. Wilson that she was "a wonderful person in the image of Eve." At this point, Ms. Wilson suspected that the customer might be intoxicated. Ms. Wilson was concerned that the customer might drive while intoxicated. Ms. Wilson immediately telephoned the police. Twenty minutes later, the local chief of police came to the Casey's store and asked whether the customer had been intoxicated. Ms. Wilson said she guessed now that he had been. The officer issued Ms. Wilson a citation for selling alcohol to a person who was already intoxicated. The citation was subsequently dismissed. On April 7, Ms. Garrett discharged Ms. Wilson for violating the employer's written policy against selling alcohol to intoxicated persons. The policy appears in the employee handbook. Ms. Wilson was aware of the policy. The policy urged employees to exercise caution in concluding that a customer was under the influence when there might be another logical explanation. Ms. Wilson was mindful of the policy and the customer's post-stroke condition at the time of the sale. Ms. Wilson had not previously been reprimanded for violating the employer's policy regarding the sale of alcohol.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Wilson was discharged for misconduct in connection with the employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

The evidence in the record fails to establish that Ms. Wilson willfully or wantonly disregarded the interests of the employer in selling beer to the customer in question. Nor does the evidence establish that Ms. Wilson was careless or negligent. Instead, the evidence establishes that Ms. Wilson made a good faith error in judgment. When Ms. Wilson realized her error, she immediately reacted in a responsible manner by alerting law enforcement of the potential danger to customers and the community. Ms. Wilson went beyond that and brought her error in judgment to the attention of her supervisor. Good faith errors in judgment do not constitute misconduct that would disqualify a claimant for benefits. See 871 IAC 24.32(1)(a).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Wilson was discharged for no disqualifying reason. Accordingly, Ms. Wilson is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Wilson.

#### DECISION:

The Agency representative's decision dated April 28, 2006, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/pjs