

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PEGGY L KUNKEL

Claimant

APPEAL NO. 13A-UI-02008-H

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING CO

Employer

OC: 01/13/13

Claimant: Appellant (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Peggy Kunkel, filed an appeal from a decision dated February 8, 2013, reference 01. The decision found her disqualified for unemployment benefits. After due notice was issued a hearing was held in Sioux City, Iowa, on May 22, 2013. The claimant participated on her own behalf. The employer participated by District Manager Sue Allen and Store Manager Diann Koenig. Exhibits A and B were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Peggy Kunkel was employed by Casey's from October 21, 2011 until January 12, 2013 as a full-time kitchen worker. At the time of hire she received a copy of the employee handbook which sets out the store policies. One policy prohibits employees from taking or consuming any items from the store without first paying for them. This includes items which are to be disposed of. Violation of the policy is grounds for immediate discharge.

On January 12, 2013, District Manager Sue Allen was in the store while she was off duty. She personally observed Ms. Kunkel take two bags of trash out of the store, put one in the dumpster and another in her vehicle. Ms. Allen requested Assistant Store Manager Reanna Skarin to view the surveillance video to confirm what had happened. It was confirmed Ms. Kunkel had put stale donuts and bread, which were to be thrown out, into one of the bags and took it, along with another trash bag, out the door.

Ms. Skarin reported this to Ms. Allen who notified District Supervisor Sara Luebbert. Ms. Luebbert and Store Manager Diann Koenig reviewed the video themselves then Ms. Kunkel was notified by phone she was fired that same day.

A few days later Ms. Kunkel contacted Ms. Allen and asserted Ms. Koenig had given her permission to take stale donuts and bread to feed to squirrels and birds at her home. She also asserted Ms. Koenig took such items herself. That assertion was reviewed by the employer who watched video surveillance footage. Nothing was seen of Ms. Koenig taking any items out of the store without paying for them. When questioned, the store manager denied ever giving Ms. Kunkel any such permission.

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.

The claimant does not deny taking items from the store without paying for them. Her defense is that she had permission from the store manager to do so. The manager's testimony at the hearing was that she never gave any such permission. The two written statements presented by the claimant are not sufficient to rebut this denial. One statement, from a Ms. Cox, merely states "I would be sure that she did ask" for permission.

The other statement from Ms. Bloyer, asserts she saw other employees taking home outdated items and that the store manager had allowed them to do so. Nothing specifics such as dates or the names of the other employees were mentioned.

The administrative law judge does not find these vague and unspecific assertions should be given any weight to support the claimant's statements or to rebut the employer's sworn testimony.

The claimant was discharged for violation of a known company rule. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of February 8, 2013, reference 01, is affirmed. Peggy Kunkel is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs