

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HAZEL M MILLER**  
Claimant

**APPEAL NO. 14A-UI-00541-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 12/22/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a representative's decision dated January 14, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 6, 2014. The claimant participated. Participating as a representative for the claimant was her husband, David Miller. The employer participated by Ms. Tammy Adams, Store Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Hazel Miller was employed by Casey's Marketing Company from September 8, 2004 until December 26, 2013 when she was discharged from employment. Ms. Miller initially held the position of full-time donut/breakfast cook and was paid by the hour. Her immediate supervisor was the store manager, Tammy Adams.

Ms. Miller was discharged because of an incident that had taken place on December 19, 2013. On that date a company customer had come to the Casey's facility to complain that a piece of metal had been found in a donut that was being consumed after purchase from the Casey's store that day. The employer considered the complaint to be very serious and questioned Ms. Miller about the matter. When questioned by Ms. Adams, Ms. Miller stated that while she was preparing donut dough that morning, a hand mixer that she was using began to malfunction and "a piece of the mixer was missing." When questioned about what she did after she noted that the piece was missing from the mixer as she prepared the batter, Ms. Miller stated that she had not thrown the batter away but had used it to prepare products for sale. Ms. Adams noted the claimant's statements about the matter when she documented the incident at the time.

Because the claimant had chosen to use the donut batter after the mixer had malfunctioned and she was aware that a piece was missing, the employer considered her conduct to be grossly

negligent and Ms. Miller was discharged from employment at the conclusion of the employer's investigation.

Prior to her discharge on December 26, 2013, Ms. Miller had been warned on approximately eight occasions during the year 2013 for rule violation or performance failures. The claimant had, however, demonstrated the ability to adequately perform the duties of her job.

It is the claimant's position that although she was aware that her personal hand mixer that she was using on the morning in question was malfunctioning, she was not aware that any metal objects had fallen into the batter and that she had not discovered any metal parts in the batter as she continued to mix it by hand.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 the burden of proof in establishing disqualifying job misconduct. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an

employee may not necessarily be serious enough to warrant a denial of unemployment insurance 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).

In the case at hand Ms. Miller was discharged based upon the employer's reasonable belief that the claimant had been grossly negligent by using donut batter that may have been contaminated with metal parts to prepare donuts for sale and consumption by company customers. After a company customer had complained that a piece of metal had been found in the donut purchased from the facility, the store manager immediately questioned Ms. Miller about the circumstances. That claimant admitted when questioned that there had been mixer malfunction that morning and that a piece of the mixer that she was using had gone missing. The claimant further admitted that she did not discard the batter that she was using when the mixer malfunctioned but instead used it to prepare donuts for sale in the employer's facility. Ms. Adams testified with specificity about the claimant's admissions and also documents admission in a report about the matter made at the time.

Although the administrative law judge is aware that Ms. Miller now denies being aware of a missing part, the administrative law judge finds Ms. Adams' testimony to be more credible and concludes that it must be given more weight than the claimant's general assertion of no wrongdoing.

The administrative law judge concludes that the claimant's decision to continue using the donut batter to prepare food for consumption under these circumstances was negligence of such a degree as to manifest culpability in further disregard of the employer's interests and standards of behavior that the employer had a right to expect.

Because the claimant's final act constituted misconduct in connection with the work, the claimant is disqualified for unemployment insurance benefits.

**DECISION:**

The representative's decision dated January 14, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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