

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKIE J PELSOR**  
Claimant

**APPEAL NO. 10A-UI-04153-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 02/14/10**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Vickie Pelsor filed a timely appeal from the March 10, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 30, 2010. Ms. Pelsor participated. Brian Peterson, Store Manager, represented the employer. Exhibits One, Two, and Three were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Vickie Pelsor was employed by Casey's Marketing Company as a part-time clerk from January 18, 2010 until February 12, 2010, when Brian Peterson, Store Manager, discharged her for selling cigarettes to a minor. The employer has a zero tolerance policy regarding the sale of age restricted products to persons under the legal age to purchase them. The employer has multiple procedures in place to verify the age of a person attempting to purchase tobacco products. Ms. Pelsor understood the policy and procedures and had received appropriate training. On February 12, 2010, Ms. Pelsor sold cigarettes to a minor as part of an undercover police sting. Ms. Pelsor took no steps to verify the customer's age before selling the age-restricted product to the customer. A law enforcement officer issued a citation to Ms. Pelsor. Ms. Pelsor notified Mr. Peterson of the incident immediately after it occurred. Mr. Peterson went to the store and discharged Ms. Pelsor under the employer's policy.

## 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 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).

The weight of the evidence indicates that Ms. Pelsor knowingly failed to follow the employer's policy, and the applicable law, regarding sale of tobacco to a minor. Ms. Pelsor's conduct constituted misconduct in connection with the employment. Accordingly, Ms. Pelsor is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Pelsor.

**DECISION:**

The Agency representative's March 10, 2010, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs