

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHLEEN M THOMAS**  
Claimant

**APPEAL NO. 07A-UI-08475-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**  
Employer

**OC: 08/05/07 R: 04**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Kathleen Thomas filed a timely appeal from the August 29, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 26, 2007. Ms. Thomas participated and was represented by John Graupmann of H.E.L.P. Legal Assistance. Melanie Newmiller, Area Supervisor, represented the employer. Exhibits One and Two were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kathleen Thomas was employed by Casey's Marketing Company on a full-time basis from December 2006 until August 6, 2007, when Area Supervisor Melanie Newmiller discharged her. Until February 2007, Ms. Thomas was an assistant manager at Casey's store in Bettendorf. In February, Ms. Thomas was promoted to the position of store manager for a store in Davenport. Ms. Newmiller was Ms. Thomas' supervisor throughout.

The final incident that prompted the discharge occurred on Sunday, August 5, 2007 and came to Ms. Newmiller's attention on August 6, 2007. At that time, Ms. Newmiller learned from another Casey's store manager that a customer had complained to that manager about not being able to order a pizza from Ms. Thomas' store on August 5 because the kitchen had been closed. The customer had ordered the pizza from the other Casey's store instead. On August 5, the kitchen clerk scheduled to work at 4:00 p.m. did not appear for her shift or notify anyone at Casey's that she would be absent for her shift. The clerk assigned to run the cash register that evening did not notify Ms. Thomas of the kitchen clerk's absence until 9:00 p.m., when the clerk contacted Ms. Thomas regarding another matter. Ms. Thomas was not scheduled to work that day. The cashier clerk had not contacted Ms. Thomas earlier about the kitchen clerk's absence because she knew Ms. Thomas had worked 60 hours that week and was on her only day off. Ms. Thomas was responsible for scheduling employees and for

making certain that the store was appropriately staffed at all times. The kitchen was scheduled to close at 10:30 p.m. The cashier clerk's boyfriend was at the store with her. Ms. Thomas concluded that there was no need for her to go into the store at that point and cover for the absent kitchen clerk. However, the employer's staffing policy required that two staff be on duty at closing time.

On August 6, Ms. Newmiller confronted Ms. Thomas about violating Casey's policy by allowing the kitchen to close early on August 5 and allowing a single staff member to close the store on that date.

## **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).

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).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The greater weight of the evidence indicates that Ms. Thomas did not know until late in the evening on August 5 that kitchen clerk had failed to appear for work. The greater weight of the evidence indicates that Ms. Thomas was aware of the employer policy that the kitchen remain open during regular hours and that two staff members be present at closing. The evidence indicates that Ms. Thomas was negligent in failing to take appropriate steps to cover the balance of the kitchen clerk’s shift on August 5 and by allowing the cashier to close the store alone. However, this isolated incident of ordinary negligence would not rise to the level of substantial misconduct necessary to disqualify Ms. Thomas for unemployment insurance benefits. The evidence fails to establish recurrent careless or negligence.

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

**DECISION:**

The Agency representative’s August 29, 2007, reference 01, decision is reversed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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