

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN M WILLOUGHBY**  
Claimant

**APPEAL NO. 11A-UI-01950-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORES**  
Employer

**OC: 11/28/10  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 9, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on April 12, 2011. Claimant participated. Employer participated through manager Brian Peterson.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as an assistant manager and was separated from employment on November 21, 2010. The store was very busy, the kitchen clerk Sue was at the register and took the minor customer's identification. She tried scanning it but it did not work so she entered a birth date that allowed the transaction. She accepted the customer's \$20.00 bill. Claimant arrived from the back room after changing a soda canister. Sue told her she had scanned the identification and said he was of age. She rang in the tobacco, looked at the identification and compared the photo to the customer but did not scan it again. She mentally calculated the birth year off by a year, and completed the sale. After the state trooper issued the citation, Sue told claimant the scan had been rejected. Sue was given a verbal and written warning because she did not complete the sale by giving change and handing the cigarettes to the minor. Claimant was discharged but had no other warnings for any reason. The employer's policy calls for termination upon a first offense.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

Even though claimant completed the sale of tobacco to a minor, since the consequence was more severe than the other employee received for her part in the sale and misrepresentation of the customer's age to the claimant, the disparate application of the policy cannot support a disqualification from benefits.

**DECISION:**

The February 9, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs