

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BECKY L LOPEZ**  
Claimant

**CASEY'S MARKETING CO**  
Employer

**APPEAL 16A-UI-10050-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/07/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 13, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on October 10, 2016. Claimant participated and was represented by Emily Roth-Richardson, Attorney at Law. Employer participated through store manager Jennifer Karr and Alyce Smolsky of Equifax/Tax represented the employer. Employer's Exhibits 1 and 2 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time sub shop kitchen worker through August 13, 2016. On August 6 and 7, she poured fountain drinks into a clear plastic cup rather than her employee mug and did not ring it up with a 100 percent discount for the beverage or pay for the cup before consumption. On August 8 claimant filled her employee mug with a fountain drink but did not ring it up. Claimant worked in the sub shop so did not use a register. The employer's policy, which claimant received on June 19, 2012, sets out a very specific policy for employee purchases, including free beverages. Specific to this situation, the policy requires employees use the employer-issued mug for fountain drinks and ring the drink on the register at full price but with a 100 percent employee discount. Drinks in anything other than the mug are charged at full price. The policy warns: "An employee who fails to properly pay for products as required before the product is consumed or removed from the store, or who fails to properly handle his or her receipts, as required by this policy, will be subject to immediate disciplinary action up to and including termination." (Emphasis added.) (Employer's Exhibit 1) The employer had not previously warned claimant her job was in jeopardy for any similar reasons. Claimant received permission from the assistant manager Barb Stoeffel to purchase a clear cup at 16 cents on August 6 and 7. On Saturday, August 6 there is no visible evidence claimant (wearing a white smock) paid for the cup or rang up the beverage at the employee discount rate before taking it into the kitchen. On Sunday, August 7 video surveillance does not show her paying for the cup

or ringing up the beverage but does show her placing something in the trash by the register. On Monday, August 8 the video shows her speaking to someone stocking products between the registers, and filling her employee mug at the soda fountain but again no indication she rang up the employee discounted beverage. There is no audio on the surveillance video so there is no information about whether she asked the cashier present on all three occasions to ring it up for her. There is no visual evidence the cashier rang up the beverages or that he provided her with any receipts.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

### **Causes for disqualification.**

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The beverage policy is reasonable in that, even without an allegation of theft, the employer has an interest in maintaining accurate inventory records of discounted employee goods. Since others have also been warned and discharged for similar conduct, disparate application of the policy is not evident. Even assuming she had permission to purchase a plastic cup on the first two days before locating her employee mug and that she told a cashier to ring up the cups and beverages, the employer has presented substantial and credible evidence that claimant failed to pay for the non-employee plastic cup on two consecutive days and failed to ring up her discounted beverage *before consuming it* on three consecutive days in violation of

the specific employer policy. This evinces deliberate violation of the policy and is disqualifying misconduct.

**DECISION:**

The September 13, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs