

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAVONNE H THOMPSON**

Claimant

**APPEAL NO. 08A-UI-06549-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 06/15/08 R: 02  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

LaVonne Thompson filed a timely appeal from the July 7, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 30, 2008. Ms. Thompson participated. Store Manager Connie Metzler 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: LaVonne Thompson was employed by Casey's as a part-time cashier and pizza maker from December 29, 2005 until June 7, 2007, when she was suspended for selling cigarettes to a person under the legal age to purchase cigarettes. The employer subsequently discharged Ms. Thompson on June 15, 2008.

The employer has a written policy that prohibits employees from selling cigarettes to persons under the 18 years old. The policy requires that cashiers ask for a photo ID if the customer appears to be under 27 years old. The employer provides a scanning device that the cashier can use to scan the photo ID to readily determine whether the customer is of legal age to purchase cigarettes. The device was readily available to Ms. Thompson and she had previously demonstrated an ability to use it. The policy warns employees that violation of the policy will result in immediately termination of the employment. Ms. Thompson was at all relevant times aware of the policy and received period reminders of the policy.

On June 7, 2008, the Perry Police Department conducted an undercover sting operation to determine whether the Casey's staff was selling cigarettes to minors. Ms. Thompson handled the transaction involving the underage person. Ms. Thompson thought the person looked 19 years old. Ms. Thompson sold cigarettes to the underage person without asking for a photo ID. The store was not busy at the time and there was nothing to prevent Ms. Thompson from

following the established procedure to check the person's photo ID. Immediately following the transaction, a law enforcement officer issued a citation to Ms. Thompson for illegal sale of cigarettes. The assistant store manager observed law enforcement at the store and inquired into the circumstances. Ms. Thompson admitted to the assistant store manager that she had sold cigarettes to an underage person without checking a photo ID. The assistant store manager immediately reported the matter to Store Manager Connie Metzler, who suspended Ms. Thompson pending a review of the employer's policy and review of surveillance records. Ms. Metzler conveyed, and Ms. Thompson understood, that the illegal sale would likely result in Ms. Thompson's discharge from the employment. On Monday, June 9, Ms. Metzler spoke with Ms. Thompson and notified her that she needed to speak with her in person about the illegal sale. The in-person meeting did not take place until Friday, June 13, 2008, at which time Ms. Metzler notified Ms. Thompson that she was discharged from the employment.

### **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 weight of the evidence in the record indicates that Ms. Thompson knowingly violated the employer's policy regarding the sale of cigarettes to underage persons. The evidence indicates as well that Ms. Thompson's actions were in willful and wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Thompson was discharged for misconduct. Accordingly, Ms. Thompson 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. Thompson.

**DECISION:**

The Agency representative's July 7, 2008, reference 01 decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and 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

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