

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLEE J TWAITES

Claimant

CASEY'S MARKETING COMPANY

Employer

APPEAL NO: 13A-UI-08852-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/23/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 24, 2013, reference 01, that held she was discharged for misconduct on June 17, 2013, and benefits are denied. A telephone hearing was held on September 5, 2013. The claimant participated. Teresa Zuke, Area Supervisor, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on April 19, 2010, and last worked for the employer as a full-time store manager on June 17, 2013. She became manager in September 2010. Claimant was on medical leave from February 21, 2013 until her return to work on April 18.

When claimant returned to work, the area supervisor provided her a list of issues to correct that included store policy violations. Claimant signed for the receipt of the list.

On May 17 the supervisor issued claimant a performance improvement plan of issues she needed to correct. The primary employer concern was cash shortages and customer drive-offs where payment was not received. Claimant responded to the employer that she did not have sufficient employees to run the store properly. On May 29 the supervisor left a memo for claimant that the store had about \$1,000 of unexplained shortages that involved several areas of revenue.

The area supervisor and other management personnel reviewed the shortages the first week of June to determine causation. They did not involve claimant in the review process. The employer discharged claimant on June 17 for failure to perform her job duties.

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 administrative law judge concludes employer failed to establish claimant was discharged for a current act of misconduct on June 17, 2013 for failure to perform job duties.

The employer discharged claimant for shortages on June 17 that it knew had occurred as of May 17 and May 29. When the employer failed to determine the causation for the shortages in its early June review, it waited until June 17 to terminate claimant. It failed to establish what the claimant did or failed to do that led to the shortages. The employer knew claimant did not have sufficient employees to run the store and this is as plausible a reason to explain the shortages as opposed to blaming claimant.

Claimant had been store manager for more than two years without any apparent disciplinary issues. It was after a two-month absence that the employer confronted her with a variety of issues on April 18, and given the length of time of her absence, and an insufficient employee workforce, only a brief period to correct them.

DECISION:

The department decision dated July 24, 2013, reference 01, is reversed. The claimant was not discharged for a current act of misconduct on June 17, 2013. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs