

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROXANNE L CATES
Claimant

APPEAL NO. 12A-UI-05417-SWT

**ADMINISTRATIVE LAW JUDGE
NUNC PRO TUNC DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 04/08/
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 30, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 28, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Vicky Shannon participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing. This nunc pro tunc decision is being entered to correct the disposition code on the document from **Appellant (2-R)** to **Respondent (1)**. No new appeal rights result from the issuance of this decision, unless a party demonstrates that it was misled by the original disposition code because the substantive text of the decision was correct.

ISSUES:

Was the claimant discharged for work-connected misconduct?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked as a cashier and kitchen worker from July 2, 2009, to March 17, 2012. Vicky Shannon is the store manager. She was informed and understood that under the employer's work rules, she was responsible for the contents of her register and was subject to discipline for cash-handing issues. She was warned on December 21, 2011, and January 11, 2012, for having cash shortages.

On March 16, 2012, the claimant's husband was at the store to buy \$20.00 in gas. The claimant intended to pay for the gas but discovered that the store ATM machine was not working. She rang up the purchase as a cash transaction. She planned to purchase an item of merchandise with her debit card, get \$20.00 cash back, and put the \$20.00 in the register, but she got busy and forgot to pay for the gas.

On March 17 when she reported to work she gave the manager on duty \$20.00 and explained what had happened the day before. She worked her shift that day. The next day, the employer discovered a \$40.00 cash shortage from the claimant's shift on March 17.

As a result of the cash shortages and her failure to immediately pay for her husband's gas, the claimant was discharged on March 19.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. I believe the claimant testimony that she planned to put cash in the register to pay for the gas purchase and then forgot. If she was trying to avoid paying for the gas, she would not have brought in the cash the next day. At most the evidence shows isolated instances of ordinary negligence, not willful misconduct.

NUNC PRO TUNC DECISION:

The unemployment insurance decision dated April 30, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css