

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA A HERNANDEZ**  
Claimant

**APPEAL NO. 12A-UI-04315-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 03/18/12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Casey's Marketing Company filed a timely appeal from a representative's decision dated April 9, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on May 9, 2012. The claimant participated. The employer participated by Ms. Kim Hoening, store manager. Employer's Exhibits 1, 2, and 3 were received into evidence.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Jessica Hernandez was employed by Casey's Marketing Company from December 18, 2011, until March 11, 2012, when the claimant was discharged based upon the employer's belief that the claimant had sold cigarettes to an underage individual. Ms. Hernandez worked as a part-time cashier and was paid by the hour. Her immediate supervisor was Ms. Hoening, the store manager.

The claimant was discharged after another store employee alleged that Ms. Hernandez had sold cigarettes to the other clerk's underage nephew. Although the claimant denied the allegation and there was no evidence supporting the statement of the other employee, a decision was made to terminate Ms. Hernandez from her employment. Prior to discharging the claimant, the store manager did not review security tapes to determine whether the allegation against Ms. Hernandez was based in fact.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing misconduct sufficient to warrant the denial of unemployment insurance benefits.

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. 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 App. 1992).

Allegations of misconduct 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 Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

While hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable.

In the case at hand, the claimant was discharged based upon only the allegation of another employee that Ms. Hernandez had violated company policy by selling cigarettes to an underage individual. The claimant categorically denied the allegation, both at the time that the allegation was made and during the hearing on this matter.

The administrative law judge concludes that the evidence in the record is insufficient to support a finding of intentional disqualifying misconduct on the part of the claimant. The employer did not review security tapes nor provide any firsthand testimony supporting its conclusion that Ms. Hernandez had violated company policy. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated April 9, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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