

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE A DUNN**  
Claimant

**APPEAL NO. 09A-UI-10008-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING CO**  
Employer

**OC: 05/31/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Casey's, filed an appeal from a decision dated July 1, 2009, reference 01. The decision allowed benefits to the claimant, Michelle Dunn. After due notice was issued a hearing was held by telephone conference call on July 29, 2009. The claimant participated on her own behalf. The employer participated by Area Supervisor Sherrie Oelschlager.

**ISSUE:**

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

**FINDINGS OF FACT:**

Michelle Dunn was employed by Casey's from December 11, 2005 until May 28, 2009 as a full-time store manager. As a store manager she is to do a beer "audit" twice per month to determine if the inventory balances with the invoices. This is done in order to detect theft. If the audit does not balance, the audit is to be done every day in order to determine where the theft is occurring or if there is another problem.

On April 13, 2009, the claimant's beer audit was short by 31 units. Ms. Dunn did not increase the frequency of her audits as required and the imbalance was discovered by Area Supervisor Sherrie Oelschlager on April 21, 2009, when she did her monthly review. The claimant was given a written warning and five-day suspension for the imbalance in the beer audit, the failure to do daily audits thereafter, and also incorrectly doing lottery audits which cost the store \$2,100.00 in revenue, and for the overall lack of cleanliness of the store. The warning advised her to do the beer audits daily and report the results to the area supervisor, and to keep doing the audits daily until the problem was resolved. She was also notified her job was in jeopardy if improvement was not seen.

From April 21, 2009 until May 28, 2009, when the store was again audited, Ms. Dunn had not performed any audits at all. She was discharged by Ms. Oelschlager at that time.

Michelle Dunn has received unemployment benefits since filing a claim with an effective date of May 31, 2009.

**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 claimant had been advised her job was in jeopardy as a result of her failure to perform her job duties as required. The beer audit has to be done in order to detect any theft from the store. Ms. Dunn's failure to do a daily audit when a shortage was discovered was a violation of company policy. Her continued failure to do the daily audit after being specifically instructed to do so in the April 21, 2009, warning is not only refusal to follow company policy, but refusal to follow the reasonable instructions of her supervisor, which is insubordination. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of July 1, 2009, reference 01, is reversed. Michelle Dunn is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs