

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**SUSAN M SEEMAN**

Claimant,

and

**CASEY'S MARKETING COMPANY**

Employer.

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**HEARING NUMBER: 13B-UI-08707**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION:** 96.5-2-A, 24.32-1

**DECISION**

**UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE**

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Employment Appeal Board would adopt and incorporate as its own the administrative law judge's Findings of Fact with the following modifications:

It was not unusual for several other store clerks to work the cash registers in the store. (14:45-14:29) The Claimant had only been working on the cash register for three months when the cash shortages occurred. (10:50-10:44; 10:35-10:21) She was also responsible for unloading the truck and sharing the cash register with several other cashiers during the day. (10:43-10:40) The Claimant had never received any training on the cash register; rather she was "...just thrown in...learned on [her] own..." (10:17-9:54)

On May 6<sup>th</sup> and June 12<sup>th</sup>, the Claimant was not the only cashier working out of the cash drawer (8:43-8:35); there were three other employees accessing the cash drawer. (7:44-7:34) Additionally, the cash drawer had been opened at the start of both days in the store manager's name. (8:29-8:16) When the Claimant received her first warning, she told the Employer that she was not the only cashier to use that

drawer; but the Employer disregarded her concern stating that she, herself, never had a cash shortage. (8:43-8:39; 8:06-7:54) The 3<sup>rd</sup> time the Claimant came up short, the money had already been placed in the drawer prior to her arriving at work that morning. (7:33-7:12; 5:17-5:09) She did not count the money that morning, assuming it was correct. (5:01-4:43) At the end of her shift, she counted the money in the drawer, but did not know that there was shortage until the following day. (4:38-4:08)

The Claimant saw daily notes on the manager's wall indicating there were other shortages on the cash register during the months of May and June. (3:41-3:08; 1:05-:33)

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665, (Iowa 2000) (quoting Reigelsberger v. Employment Appeal Board, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 NW2d 661 (Iowa 2000).

The record establishes that the Claimant received no formal training on the cash register which arguably may have contributed to the shortages on the cash register. However, both parties agree that the more than one employee worked the cash register. The Claimant provided credible testimony that on May 6th and June 12th, she worked the cash register with three other employees. Thus, any one of these people could have been responsible for the shortage on these days. Additionally, Ms. Seeman was not the party who set up the drawer any morning for which shortages occurred. The fact that she, initially, did not have had an acceptable explanation does not render her culpable of any negligence or wrongdoing. It is clear that she was not the only employee experiencing shortages, as the Employer acknowledged keeping daily notes of other shortages, the likes of which had 'explanations,' that passed muster. It is not reasonable to hold the Claimant responsible for shortages when other employees have access to the same cash register. Based on this record, we conclude that the Employer failed to satisfy her burden of proof.

**DECISION:**

The administrative law judge's decision dated September 4, 2013 is **REVERSED**. The Employment Appeal Board concludes that the claimant was discharged for no disqualifying reason. Accordingly, she is allowed benefits provided she is otherwise eligible.

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John A. Peno

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Cloyd (Robby) Robinson

AMG/fnv