

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUZANN BLAIR
Claimant

APPEAL NO. 07A-UI-02679-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING CO
Employer

**OC: 02/18/07 R: 02
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Suzann Blair (claimant) appealed an unemployment insurance decision dated March 12, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Casey's Marketing Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 3, 2007. The claimant participated in the hearing. The employer participated through Joan Mahoney, Area Supervisor. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time cashier/pizza maker from August 27, 2003 through February 17, 2007, when she was discharged for violation of company policy. The employer's policy provides that if any employee sells age-restricted products to a minor, they are subject to termination. Retraining is offered annually and the claimant last received training on September 26, 2006. When checking to determine whether a customer is over age 18, the employee first requests identification and then can either type the birth date into the cash register or the Hypercom machine. Both will provide a correct answer. In the case herein, on February 17, 2007 a customer requested to purchase cigarettes, which are age-restricted. The claimant asked for identification but only looked at it and did not type in the birth date. She sold the cigarettes to a 17-year-old minor and was subsequently ticketed by the Story County Police Department. The claimant was discharged at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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 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 claimant was discharged for violation of the employer's policy which prohibits selling age-restricted products to minors. She knew violation of this policy was a terminable offense and had been trained and retrained on this policy. The employer provides two separate tools for its employees to check identification as opposed to guessing. The claimant failed to utilize either tool and consequently sold cigarettes to a minor, which was a violation of the law for which she was cited. Her actions demonstrate a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated March 12, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw