

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN A BEAIRD

Claimant

APPEAL NO. 11A-UI-12662-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 08/14/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated September 20, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on October 19, 2011. Claimant participated personally. The employer participated by Ms. Renee Smith, Area Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Dawn Beaird was employed by Casey's Marketing Company from December 8, 2009 until August 15, 2011 when she was discharged from employment. Ms. Beaird held the position of part-time cashier and was paid by the hour.

The claimant was discharged after she violated the company's "zero tolerance policy" by failing to adequately check the identification of an underage individual who was attempting to purchase alcohol from the facility.

Company policy requires all clerks to personally check the identification of any individual who appears to be 27 years of age or younger when the purchase of alcohol is involved in the transaction. Employees are required to take the purchaser's identification and to swipe it through the company's computer system or its credit card system for automatic verification of the purchaser's legal age. Ms. Beaird was aware of the policy and was aware that violation of it could result in her termination from employment.

On August 15, 2011, Ms. Beaird took possession of the identification of an individual who was attempting to purchase alcohol. Ms. Beaird visually checked the identification and proceeded with the sale without scanning it as required or determining that the purchaser had not reached

21 years of age by using the dates on the identification that had been provided. As a result of the claimant's failure to check the identification and her sale of alcohol to an underage buyer she was cited by police authority and the company was fined.

It is the claimant's position that her conduct on August 15, 2011 was not intentionally in disregard of the employer's interest but due to lack of attention caused by personal issues.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 of proof in this matter. See Iowa Code § 96.6(2).

In this matter the evidence establishes that Ms. Beard was aware of the company policy that specifically required all company employees to check the identification of individuals who were attempting to purchase alcohol if they appeared to be 27 years of age or younger. The claimant was also aware that she was required to utilize a simple scanning procedure available to her at the check-out stand. Ms. Beard was aware that failure to follow the procedure would result in immediate termination if a sale to an underage person took place.

On August 15, 2011, the claimant did not follow the required procedure although she had the opportunity to do so. The claimant visually looked at the identification of an underage purchaser and although the identification showed that the individual was under 21 years of age, the claimant nevertheless sold alcohol to the underage buyer.

The administrative law judge is convinced that the claimant did not intentionally violate company rules and the law but that her carelessness or negligence was of such a degree in this matter so as to manifest equal culpability. Claimant's failure to follow this known and important company rule caused not only the claimant to lose her job and to be fined but also caused the employer to pay a civil fine and potentially jeopardize the employer's license to sell alcoholic beverages at the facility. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated September 20, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs