

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAMELA S JONES**

Claimant

**APPEAL NO: 14A-UI-04077-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 03/09/14**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 9, 2014, reference 01, that held she was discharged for misconduct on March 10, 2014, and benefits are denied. A telephone hearing was held on May 6, 2014. The claimant, and witness/cousin, Tammy Spaur, participated. Peggy Smith, Manager, and Sue Guillon, Area Supervisor, participated for the employer. Claimant Exhibit A and Employer Exhibit One were received as evidence.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on July 3, 2012, and last worked for the employer as a full-time cashier on March 5, 2014. The employer began noticing cigarette shortages against its inventory control system, so it began watching security video.

The employer saw a March 1, 2014 video showing claimant putting two cigarette packs into an empty carton, going in to an office where she kept her purse and coat, and coming out of the office with an empty carton. The employer saw a March 5 video with claimant doing the same thing. The employer found no claimant cash register transaction where she purchased the cigarettes. The employer discharged claimant on March 10 for theft of company property. The Knoxville police observed the store video and investigated the matter. The police filed a criminal theft charge against claimant that is pending.

## REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes employer established claimant was discharged for misconduct on March 10, 2014 for theft.

The employer had security video evidence claimant concealed taking two packs of cigarettes on two recent occasions without paying for them. The employer had an independent evaluation of the evidence of local police who concluded there was sufficient evidence of theft to file a criminal charge against claimant. Claimant offered no documentation she paid for the cigarettes.

**DECISION:**

The department decision dated April 9, 2014, reference 01, is affirmed. The claimant was discharged for misconduct on March 10, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs