

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHRISTY CHURCH**  
Claimant

**APPEAL NO. 14A-UI-04307-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORES**  
Employer

**OC: 03/23/14  
Claimant: Respondent (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated April 16, 2014, (reference 01), which held that Christy Church (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2014. The claimant participated in the hearing. The employer participated through Katy Brunning, Store Manager and Alisha Weber, Employer Representative. Employer's Exhibits One through Three and Claimant's Exhibits A and B were admitted into evidence.

**ISSUES:**

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time cook and pizza maker from April 8, 2013, through March 26, 2014, when she was discharged for violating her developmental plan. She was 'always fighting and arguing with other staff' and was placed on a Developmental Plan on December 20, 2013. The claimant was a very hard worker but she was intolerant of other employees and could not get along with the team members. Several new employees quit because they could not or would not work with the claimant due to how she acted towards others.

The claimant and Lakita got into a verbal, almost physical altercation in approximately September 2013. The claimant fought with Katie who could not take and finally came screaming through the store saying she quit. Connie and Olivia got into a fight about dishes and the claimant had to become involved in that. The employer hired Jennifer who was going to be an assistant manager but the claimant could not get along with her. The final incident which

led to the Developmental Plan was when the claimant picked up a box of eggs and threw it across the kitchen where it landed on the floor. Jennifer quit two days after that.

The Developmental Plan advised the claimant she had to have a good attitude and treat others the way she wanted to be treated. She was not to fight with any co-workers and was not to verbally attack co-workers. The Plan indicated that, "It has come to a point of asking ourselves who is the common denominator in all this fighting and arguing."

The final straw which led to termination occurred on March 21, 2014, when a co-worker asked the claimant for breakfast pizzas and it turned into a loud argument. The claimant's written explanation states, "After being at work only 15 minutes another employee, who had been at work since 3 am, asked in a snide tone, 'We need breakfast pizzas made!' My reply in a flat tone was, 'What does it look like I'm doing?' The other co-worker's response was only to throw her hands in the air and stomp away. She then told another co-worker at the door, 'I can't take any more of this!' then stormed outside to have a cigarette." The claimant believes the co-worker's purpose was to create a scene so she could go outside and have a cigarette, "...And blame my bad attitude on her wanting to go outside to smoke." The claimant wrote that she became the "scapegoat for another employee's bad habit." She blamed the problems on the manager and said the manager "was afraid of word getting out about how terrible of a manager she truly is...."

The claimant filed a claim for unemployment insurance benefits effective March 23, 2014, and has received benefits after the separation from employment in the amount of \$1,512.00. Ashley Weber personally participated in the fact-finding interview on behalf of the employer. She also submitted numerous written documents to the fact-finder the day before the interview, the same documents which were provided for the hearing today.

#### **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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 26, 2014, for repeated disruptive behavior and violating a final warning. She denies all wrongdoing and places blame on the manager and co-worker. The claimant's contention, that the co-worker caused a scene so she could go outside to smoke, simply lacks merit. Her written statement provides insight as to what happened that day and how she affected the work environment in a negative way. The employer has met its burden. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits she has received could constitute an overpayment. The unemployment insurance law requires benefits be recovered from a claimant who receives benefits from an initial decision and is later denied benefits from an appeal decision, even though the claimant acted in good faith and was not otherwise at fault. In some cases, the claimant might not have to repay the overpayment if both of the following conditions are met: 1) there was no fraud or willful misrepresentation by the

claimant; and 2) the employer failed to participate in the fact-finding interview. If the overpayment is waived due to the employer's failure to participate, that employer's account continues to be subject to charge for the overpaid amount. See Iowa Code § 96.3-7.

The claimant received benefits in the amount of \$1,512.00 as a result of this claim. A waiver cannot be considered because the employer participated in the fact-finding interview. See 871 IAC 24.10. Its account is not subject to charge and the claimant is responsible for repaying the overpayment amount.

**DECISION:**

The unemployment insurance decision dated April 16, 2014, (reference 01), is reversed. 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. The claimant is overpaid benefits in the amount of \$1,512.00.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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