

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENA M LEWIS**  
Claimant

**APPEAL NO: 14A-UI-10363-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 08/24/14**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's September 26, 2014 (reference 02) decision that concluded Dena M. Lewis (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2014. The claimant participated in the hearing. Karen Fillingner appeared on the employer's behalf. 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:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on April 8, 2014. As of July 22, 2014 she worked full time as an assistant manager in the employer's Burlington, Iowa store. Her last day of work was August 14, 2014. The employer discharged her on that date. The reason asserted for the discharge was supposedly failing a tobacco sales sting.

On July 23 a customer known to the claimant to be over age 21, because she had previously checked his identification, came in and purchased cigarettes. Because the claimant had previously checked his identification, she did not again ask to see his identification. In the store at the time was a representative of the Food and Drug Administration, who came up after the customer had left and had indicated to the store's management that the claimant should have asked to see the customer's identification because the FDA representative thought the customer appeared to be under age 27. A notation of the discussion was received by the employer on July 25, and on July 27 the claimant was verbally counseled on the matter.

The employer acknowledged that the claimant had not previously been trained regarding the practice of carding customers who look like they could be under 27-years-old. Nothing further was said or done until August 14 at which time the new area supervisor, Fillinger, came into the store and advised the claimant that she was being discharged due to the incident.

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

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the supposed failure in a tobacco sting on July 23. First, it does not appear that the claimant in fact sold a tobacco product to a minor, which is the purpose of the policy to check identification of someone who appears as if they could be under 27. Misconduct connotes volition. *Huntoon*, supra. The employer acknowledged that the claimant had not been trained on the practice of checking identification on all customers who appear as if they could be under 27, so the claimant did not intentionally fail to do so. Further, there is no current act of misconduct as required to establish work-connected misconduct. Rule 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The incident in question occurred over three weeks prior to the employer's discharge of the claimant, and the employer had already counseled the claimant and led her to believe the matter was closed. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's September 26, 2014 (reference 02) decision is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/can