

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERA K STRUM

Claimant

APPEAL NO. 11A-UI-12445-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 08/14/11

Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's decision dated September 13, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 17, 2011. The claimant participated personally. The employer participated by Ms. Tonya McNickle, Area Supervisor.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Jera Strum was employed by Casey's Marketing Company from April 25, 2005 until August 13, 2011 when she was discharged from employment. Ms. Strum worked as a part-time cashier/pizza cook and was paid by the hour. Her immediate supervisor was the store manager, Debra Waage.

On or about August 13, 2011, a company assistant manager alerted company management that Ms. Strum had violated company policy by paying for lawn service in advance of the services being provided and that the lawn service had not taken place.

Tonya McNickle, her supervisor, reviewed surveillance camera recordings and observed Ms. Strum paying \$30.00 for the lawn service in advance to her boyfriend. Ms. McNickle also observed the boyfriend removing a package of balloons from a shelf and handing them to Ms. Strum. It was also observed that Ms. Strum inflated one or more of the balloons and gave them to her children but did not pay for them. These events took place on August 12, 2011.

The employer then determined that the lawn service provider did not return and provide the lawn service that had been paid for in advance. The employer also determined that the balloons had been removed with Ms. Strum's approval and had not been paid for.

Company policy provides that employees who are making purchases must pay for the purchases on the same day that the items are taken or consumed. Authorization to vary from that requirement requires the advance permission of management personnel. Company policy does not allow employees to prepay for services that are to be provided to the company. On August 12, 2011 an assistant manager was present, however, Ms. Strum did not obtain the permission of the assistant manager to make the prepayment for lawn service to her boyfriend and the claimant did not inform the assistant manager or any other management personnel that the prepayment had been made or that the lawn services had not been provided that day. The claimant did not pay for the balloons at the end of her shift.

It is the claimant's position that she believed that she was authorized to make prepayment and believed that her boyfriend would have provided the services if other events had not intervened. It is the claimant's further position that she merely "forgot" to pay for the balloons.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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 section 96.6.2.

In this case the evidence shows that Mr. Strum provided a \$30.00 advance payment to an individual who was her boyfriend for lawn cutting services for Casey's General Stores. The claimant gave her boyfriend \$30.00 out of the cash register so that the boyfriend could by "gas" to get the lawn mower to cut the grass. Although the funds that belonged to Casey's General Stores had been taken out of the cash register and provided to her boyfriend, Ms. Strum did not inform the assistant manager on duty of her activities nor inform management at the end of the shift that \$30.00 had been given to an individual who did not return to cut the lawn.

Although the administrative law judge is aware that the claimant believed that she may have been "authorized" to make advance payment, the claimant clearly was not authorized to have made a payment to an individual who she had a personal relationship with and then not report to management that the services that had been paid for had not been provided. The claimant kept this information to herself causing \$30.00 to have been taken from the company's cash register and given to a personal friend without any services being performed for the company that day.

The administrative law judge concludes that the claimant's failure to provide reasonable and timely notice to the employer of a substantial cash expenditure for services that had not been performed by the end of her shift showed a disregard for the employer's reasonable interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This

subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated September 13, 2011, reference 01, is reversed. 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 is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css