

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA HOWARD**  
Claimant

**APPEAL NO: 10A-UI-00659-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 12-13-09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the January 6, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 4, 2010. The claimant participated in the hearing. Vicky Kinman, Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time doughnut maker/pizza maker/cashier for Casey's from March 23, 2005 to December 10, 2009. Around 2:00 p.m. December 10, 2009, a customer came into the store and asked to buy a pack of cigarettes. The claimant asked for her driver's license, looked at it for awhile, and read it. Manager Vicky Kinman was present and suggested the claimant use the scanner if she was not sure but the claimant said the date was okay and handed the customer her license back and allowed her to purchase a pack of cigarettes. Soon afterward a Mahaska County Deputy came in and told the claimant and Ms. Kinman that the transaction was a sting and the customer was underage. Per policy Ms. Kinman was forced to terminate the claimant's employment immediately although she was an excellent employee. The claimant thought the date on the license said 1983 instead of 1993 and she was fined \$200.00 by the state. The company preference is that employees scan the license or punch the date into the register but does not require that they do so and the claimant thought the customer looked of age and believed she was correct in determining the date on the license was 1983. The claimant admits she made a mistake and testified she would never intentionally sell cigarettes to a minor. Ms. Kinman does not believe the claimant acted intentionally.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant did violate the law, this was an isolated incident and was not intentional or willful misconduct. Simply put, "(her) eyes betrayed (her)." Although the misconduct was substantial, it was not willful wrongdoing and there is no evidence of repeated carelessness or negligence as the claimant was never warned about anything during her nearly five years of employment and her manager testified she was an outstanding employee. Under these circumstances, the administrative law judge cannot conclude that the claimant's actions rise to the level of intentional, disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The January 6, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css