

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIKAYLA J MULLER

Claimant

APPEAL NO. 12A-UI-12827-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/30/12

Claimant: Respondent (2R)

Section 96.5-2-A – Discharge for Misconduct

Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated October 18, 2012, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 19, 2012. The claimant responded to the hearing notice but was not available when called by the administrative law judge. A detailed message was left on how to participate in the hearing. The claimant did not call during the hearing. The employer participated by Stephen Goss, Store Manager. The record consists of the testimony of Stephen Goss and Employer's Exhibits 1-5.

ISSUES:

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a convenience store chain. The claimant worked as a part-time clerk at a store located in Cedar Rapids, Iowa. The claimant was hired on August 3, 2011. Her last day of work was September 26, 2012. She was terminated on September 26, 2012.

The incident that led to the claimant's termination occurred on September 25, 2012. The store manager, Stephen Goss, was reviewing surveillance tapes from that date. He observed the claimant make herself a salad and eat it without paying for it. The employer has a strict policy that any of the store food that is consumed by employees must first be purchased and a receipt obtained. When the claimant was interviewed about the incident, she said that she had done it in the past and not paid for the food. The claimant was aware of the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties is honesty. An employer can reasonably expect that an employee will not take property belonging to the employer without paying for it. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence established that the claimant had prepared food for herself and had eaten it without paying for the food beforehand. She admitted to the employer that she had done this in the past. The claimant knew about the policy and deliberately violated the policy on more than one occasion. This is theft and is disqualifying misconduct. Benefits are denied.

The next issue is overpayment of benefits. Reference 41a The overpayment issue is remanded to the Claims Section for determination.

DECISION:

The decision of the representative dated October 18, 2012, reference 01, is reversed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant

is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css