

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOSHA NICHOLS**

Claimant

**APPEAL NO: 09A-UI-10298-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 06-14-09**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 13, 2009, 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 August 5, 2009. The claimant participated in the hearing. Ruby Coffin, 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 cashier/cook for Casey's from November 11, 2008 to June 17, 2009. On June 16, 2009, the claimant was making pizzas from 4:00 p.m. to 11:15 p.m. She did not stock the cooler or the prep table and left pizzas already made on the prep table which violated the employer's policy. Manager Ruby Coffin decided to watch the surveillance tapes to see why the work was not done and observed the claimant talking on her cell phone and then sitting on the floor in the first aisle of the store reading the newspaper while on her cell phone, all of which were violations of the employer's policy. Ms. Coffin held a meeting the week before stressing that employees were not to use their cell phones unless on break and outside of the store. She forgot to ask the claimant to come in one hour early before her shift to attend the meeting so when the claimant did arrive for her shift Ms. Coffin met with her in the office and went over the printed agenda including the use of cell phones. The claimant maintains she was on break when on her cell phone but her shift started at 4:00 p.m. and the video watched by Ms. Coffin was recorded between 4:15 p.m. and 4:20 p.m. Consequently, Ms. Coffin terminated her employment June 17, 2009, for her actions June 16, 2009. The claimant submitted her resignation notice June 9 effective July 2, 2009, to accept other employment. The employer intended to allow her to complete her resignation period until it discovered her behavior June 16, 2009. She is working for her new employer at this time.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant's actions in not completing her work tasks, talking on her cell phone and sitting in the aisle talking on her cell phone and reading the newspaper June 16, 2009, were clearly inappropriate and unprofessional and a violation of the employer's policy. The claimant and other employees were warned against use of their cell phones while in the store and not on break the week before yet the claimant chose to ignore those instructions. While the claimant had given her notice that she was leaving July 2, 2009, to accept other employment she still had a responsibility to follow the employer's rules and regulations until that time came. Consequently, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The July 13, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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