

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEAH A BENNETT**

Claimant

**APPEAL NO. 09A-UI-02890-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**Original Claim: 01/18/09  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 12, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 19, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Karen Colvin participated in the hearing on behalf of the employer with a witness, Miranda Miller. Exhibits One and Two were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

Was she overpaid unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a cashier and cook from April 4, 2008, to January 9, 2009. She was informed and understood that under the employer's drug and alcohol policy, employees were required to submit to a drug test under certain circumstances, including when an employee is reasonably believed to be using a controlled substance, and were subject to termination if they refused to be tested or tested positive for illegal drugs. The policy prohibits employees from possessing, selling, or offering for sale illegal drugs or alcohol on the job or from reporting to work under the influence of illegal drugs or alcohol.

On January 3, 2009, the claimant was arrested for possession of marijuana. Her arrest was reported in an article in the local newspaper on January 5. After seeing the article, the store manager, Miranda Miller, and district manager, Karen Colvin, suspected she might be reporting to work under the influence of illegal drugs. Pursuant to the policy, they asked the claimant to go to the clinic with them to submit to a drug test on January 9. The claimant told there was no point in going in for a drug test because she would not pass it because of her marijuana use and would get fired anyway so she was not going to do it. Colvin told that there was a chance she

would pass and she should take the test. When the claimant again said she was not going to take the drug test, Colvin informed her that she was discharged for refusing the drug test.

The claimant filed for and received \$1,215.00 in unemployment insurance benefits after she filed for unemployment during the week of January 18, 2009.

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

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Under Iowa law, employers may require employees to submit to drug tests and to discipline employees who refuse to submit to drug tests or test positive for illegal drugs, as long as the testing is done under the terms of a written drug policy that has been provided to employees subject to test and in compliance with the requirement of Iowa Code § 730.5. Iowa law allows drug testing based on reasonable suspicion of illegal drug use. Iowa Code § 730.5-8-c. Under the law, reasonable suspicion includes a "report of alcohol or other drug use provided by a reliable and credible source." Iowa Code § 730.5-1-i(3).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug test performed in violation of Iowa's drug testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999).

In this case, the drug test was requested under the terms of the employer's written policy and in compliance with Iowa law, since the employer had a reasonable suspicion that the claimant was using drugs in violation of the employer's policy based on the report of her arrest. I believe the employer's witnesses that the claimant did not merely say that she would fail the test, but said she was not going to go in to be tested, which amounts to a refusal to submit to a drug test. Work-connected misconduct has been proven in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

**DECISION:**

The unemployment insurance decision dated February 12, 2009, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw