

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY L COPELAND
Claimant

APPEAL NO: 10A-UI-16708-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS GENERAL STORES
Employer

OC: 11/14/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 6, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing with her attorney, Larry Johnson. Tonya McNickle, a store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2002. She worked as a full-time assistant manager.

Prior to November 13, 2010, the claimant's job was not in jeopardy. The employer's policy informs employees that if they are convicted of a "sting" operation, they will be discharged. A "sting" operation is performed by the local authorities to see if a clerk sells tobacco or alcohol to underage customers. The claimant understood she was required to card all customers if they bought cigarettes or alcohol.

On Saturday, November 13, the claimant was working alone when a customer bought a tobacco product. The claimant was very busy and trying to do more than one job at once. When the customer came to the cash register, the claimant forgot to ask to look at the customer's identification and sold the tobacco product to the customer. After the customer left, the local authorities issued the claimant a citation for selling tobacco to a minor or a customer who was under 18.

The claimant called McNickle, who came to the convenience store. When McNickle got to the store, the claimant told her what had happened. Since the claimant had sold tobacco to a minor, McNickle told her she was discharged and to turn in her keys.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer understood the claimant was very busy when the customer came to the register to purchase the tobacco product. The employer acknowledged that the claimant made a mistake when she did not ask for identification before she sold the tobacco product to a minor.

The claimant was very busy that day because the manager gave the kitchen employee permission to leave work early on November 13. The claimant was left alone at the convenience store and was very busy trying to do everything. Based on the facts in this case, the claimant did not intentionally fail to follow the employer's procedure. She used poor judgment and made a mistake when for the first time she inadvertently allowed a minor to buy a tobacco product. She did not commit work-connected misconduct. As of November 14, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's December 6, 2010 determination (reference 01) is reversed. The employer discharged the claimant for business reasons. This one incident on November 13, when the claimant did not check a customer's age, does not rise to the level of work-connected

misconduct when the claimant was very busy and the only person working. Therefore, as of November 14, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs