

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER CRIQUI
Claimant

APPEAL NO: 14A-UI-01964-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 01/19/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 13, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 8, 2014. The claimant participated in the hearing. Sarah Wright, Area Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three, were admitted into evidence.

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 part-time team member for Casey's from August 21, 2013 to December 12, 2013. She was discharged for falsifying her application.

The employer does not conduct background checks on regular store employees but does do background checks on delivery drivers and management personnel. Toward the end of November 2013 the employer discussed the possibility of the claimant becoming a delivery driver and a possible management position. Consequently, on November 25, 2013, the claimant digitally signed an authorization form allowing the employer to conduct a background check (Employer's Exhibit Three). The company the employer uses to perform background checks on the claimant notified the employer December 1, 2013, the claimant pled guilty to disorderly conduct, a simple misdemeanor, October 5, 2010 and August 13, 2013 (Employer's Exhibit One). The employer reviewed the claimant's original application for employment completed July 9, 2013, and noted that on the first page it asks if the applicant has ever been convicted of a crime other than a routine traffic violation and the claimant stated, "No." While the second disorderly conduct charge occurred after the claimant filled out her application, the disposition occurred August 13, 2013, approximately one week before she started working for the employer and she did not report that guilty plea either. Neither charge would have disqualified her from employment had she notified the employer of her criminal record.

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 was not honest and forthcoming when she completed her application for employment at Casey's. The application clearly asks if the individual has ever been convicted of a crime other than a routine traffic violation and the claimant answered, "No," which is obviously false. While the claimant maintains she was not aware she pled guilty to the disorderly conduct charges, it is her responsibility to know she is pleading guilty to a crime and to disclose that information when asked on an employment application. Additionally, she pled guilty to another disorderly conduct charge August 13, 2013, approximately one week before she actually started working, and failed to report that to the employer. The claimant cannot repeatedly claim ignorance of her criminal convictions or the employer's application requirements, both at the time of hire and when it undertook a criminal background check with the claimant's authorization in order to allow her to become a delivery driver and potential member of the management team.

Under these circumstances, 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 February 13, 2014, reference 02, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs