

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE KINMAN

Claimant

APPEAL NO: 12A-UI-02203-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 01/15/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Vickie Kinman (claimant) appealed a representative's February 23, 2012 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 20, 2012. The claimant participated in the hearing. Wanda Cain appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on May 7, 1992. Since about 1993 she worked full time as store manager at the employer's New Sharon, Iowa location. Her last day of work was January 12, 2012. The employer discharged her on January 13, 2012. The reason asserted for the discharge was the making of a sale of alcohol to an underage person.

The employer has a zero-tolerance policy prohibiting the sale of alcohol to an underage person. The claimant was aware of that policy. Her job was not in any jeopardy for this issue or any other reason prior to January 12. On January 12 at about 8:00 p.m. the claimant made a sale of a 12-pack of beer to a customer. She asked for identification, which was provided. She glanced at the identification but did not run the card through the register as she was distracted by other customers and duties, and she completed the sale. Immediately thereafter law enforcement officers entered and informed her that the customer had been under age 21, and

issued a citation. The claimant immediately informed Cain, the area supervisor. On January 13 Cain informed the claimant that the employer had no choice but to discharge her.

The claimant established an unemployment insurance benefit year effective January 15, 2012. She seeks unemployment insurance benefits for four weeks, ending February 11, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her sale of alcohol to an underage customer. Prior to January 12, 2012, the claimant's job was not in jeopardy and the employer knew of no other incidents where the claimant had sold alcohol to an underage person. On January 12 the claimant was negligent and made a mistake when she was busy and distracted. The claimant's mistake or carelessness led the claimant to incorrectly conclude a customer was 21 when the customer was not. The employer established compelling business reasons for discharging the claimant when she violated the employer's alcohol sales policy. However, the evidence does not establish that the claimant knowingly violated the employer's policy. Instead, she looked at the customer's identification and made a mistake. This isolated incident of carelessness or negligence does not amount to work-connected misconduct for unemployment insurance purposes. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's February 23, 2012 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css