

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE SHANNON
Claimant

APPEAL NO: 13A-UI-13253-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 11/03/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated November 25, 2011, reference 01, that held the claimant was not discharged for misconduct on November 4, 2013, and benefits are allowed. A telephone hearing was held on December 19, 2013. The claimant participated. Alisha Weber, TALX witness, and Sandra Cullen, Area Supervisor, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on July 10, 2006, and last worked for the employer as a full-time manager on November 4, 2013. She received the employer policy that includes a provision employees must pay for food items prior to consumption.

Claimant worked her last four years as manager. She was issued a written warning on October 12, 2012 about employee conduct of consuming food in the kitchen and failing to say anything as to why the food product was sitting on the prep counter. The employer warned claimant about enforcing the employee pay for consumed item policy. The employer advised claimant should review the policy with employees and have them sign/date for it. Claimant signed the warning and complied with the directive.

While claimant was on vacation, the district manager observed an employee take a food item outside the store without making payment on October 30. During the area supervisor meeting with store managers and assistants the next day, the district manager told the supervisor about what she had observed. Claimant came in for the meeting and returned to her vacation. When questioned about the food consumption/payment policy, the store assistant manager stated she allowed employees to make lists of consumed items and pay later.

The district manager advised the area supervisor to terminate claimant for failing to enforce the policy. The supervisor complied and terminated claimant when she returned from vacation on November 4. The employer did not terminate the employee who violated the policy on October 30 or the assistant manager for allowing employees to list items consumed and pay later.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on November 4, 2013. The employer does not contend claimant violated the policy but as manager she failed to enforce it.

Claimant was discharged for failing to enforce the employee food (consumed item) payment then consumption policy. She was not present on October 30 when an employee violated the policy thus she had no responsibility for this act. Claimant cannot be held accountable for what the assistant manager chose to do about making a food list. She committed no proven act of job disqualifying misconduct.

DECISION:

The department decision dated November 25, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on November 4, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css