

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**IDA I OLES**

Claimant

**APPEAL NO. 10A-UI-06868-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 04/04/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated April 29, 2010, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 28, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Sandra Irimeier participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer from September 21, 1998, to April 2, 2010. She was employed as an assistant manager for the last several years. She was informed and understood that under the employer's work rules, employees were required to request identification and check the age of any customer who appeared under the age of 27 before selling alcohol or tobacco products and were subject to termination if they failed to do so.

Despite this work rule, the accepted practice in the store was no identification was required for subsequent visits to a store after a customer had been carded and the employee had determined the customer was the proper age to purchase a product. The manager and the claimant had both followed this practice.

On April 2, 2010, the police conducted a sting operation by sending a 17-year-old boy into the store to purchase chewing tobacco. The boy has a 19-year-old brother who resembles him who the claimant had carded before and determined was 19. The claimant believed the 17-year-old was his brother, and following the practice of the store, she sold the boy chewing tobacco without requiring him to produce identification.

The employer discharged the claimant on April 2, 2010, for selling a tobacco product to an underaged customer without requiring identification.

## 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).

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 substantial and 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).

The store manager admitted that she had followed the practice of allowing a customer to purchase alcohol or tobacco without showing identification if she had carded the person before and determined the person was the proper age. The claimant did the same thing. I believe the claimant's testimony that she believed she had carded the person before and he was legally able to buy tobacco products. No willful and substantial misconduct or repeated negligence has been proven in this case.

## DECISION:

The unemployment insurance decision dated April 29, 2010, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css