

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE A SCHLICHTE

Claimant

CASEY'S MARKETING COMPANY

Employer

APPEAL NO: 12A-UI-09426-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/01/12

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated July 25, 2012, reference 01, that held she was discharged for misconduct on June 28, 2012, and benefits are denied. A telephone hearing was held on August 30, 2012. The claimant participated. Laurie Becker, Store Manager, participated for the employer. Employer Exhibit One was 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 testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time cashier/pizza cook on July 16, 2010, and last worked for the employer on June 28, 2012. The claimant received an employee handbook that contained the policies of the employer. The employer policy does not allow employees to purchase or play lottery while on duty.

The employer discharged claimant on June 28 for purchasing and playing lottery tickets. It came to the attention of the employer that a co-worker won \$1,000.00 on a scratch ticket about a week or so prior to discharge. After viewing a security video, the store manager saw claimant purchase tickets while on duty. The manager heard from other workers that claimant played the tickets while on duty.

Although the store manager wanted to issue claimant a warning, management decided to discharge claimant. About a month or so before the incident, claimant was at a store meeting where the policy was discussed. She understood that tickets could not be played in the store while customers were present. Claimant purchased the tickets, put them in her purse, and took them outside on her break where she played them.

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 June 28, 2012, for a serious violation of company policy.

The claimant understood the employee lottery policy had been modified to allow employees to purchase tickets but not play them while in the store on duty. The fact that the store manager wanted to warn claimant rather than discharge mitigates the misconduct to the point it does not constitute job disqualifying misconduct.

DECISION:

The department decision dated July 25, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on June 28, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs