

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANESSA M WILSON
Claimant

APPEAL NO. 12A-UI-07803-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/20/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 20, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 23, 2012. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Marlys Bownes participated in the hearing on behalf of the employer with a witness, Nancy Freese. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked for the employer as a kitchen worker from October 8, 2009, to May 17, 2012. She was informed and understood that under the employer's work rules, employees were required to provide courteous customer service. She received a written warning in February 2011 and retraining in customer service in September 2011 after customers complained about her poor customer service.

On May 13, 2012, the claimant failed to wait on a customer who was at the counter. When the customer asked for a fresh tenderloin sandwich, the claimant reluctantly started making the sandwich but giving the customer the idea that she was being put upon to make the sandwich. She asked the customer what was wrong with the tenderloin in the warmer that had been made 30 minutes earlier. The customer asked the claimant what was wrong with wanting a fresh sandwich. The customer felt the claimant then gave her a dirty look and that when the sandwich was ready, she tossed it across the counter. The claimant emailed a complaint to management about the claimant's rude conduct.

On May 17, 2012, the employer discharged the claimant for discourteous conduct toward customers.

The claimant filed for and received a total of \$1,302.00 in unemployment insurance benefits for the weeks between

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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But, the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated June 20, 2012, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw