

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN A GREGORY**  
Claimant

**APPEAL NO. 07A-UI-01011-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 12/31/06 R: 04  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's January 19, 2007 decision (reference 01) that concluded Susan Gregory (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 13, 2007. The claimant participated personally. The employer participated by Elizabeth Willis, Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 26, 2006, as a full-time cashier. The claimant signed for receipt of the dress code on April 26, 2006. She understood that she had to have her shirt tucked in while working. The claimant was argumentative on the job and told others what to do.

On December 26, 2006, the claimant gave a co-worker a list of duties and led him to believe the supervisor prepared the list for him. The claimant prepared the list with duties she did not complete during her shift. On December 28, 2006, the employer held a meeting because of the claimant's actions. The employer identified the claimant during the meeting and talked to the claimant about her behavior. Employee ethics were discussed at the meeting.

On December 29, 2006, the assistant manager told the claimant to tuck in her shirt. The claimant told the assistant manager she did not have to tuck in her shirt because another worker did not tuck in their shirt. The claimant made fun of, picked on and teased the assistant manager. The claimant threatened to leave early. She argued with a co-worker about performing duties. She said she would not help train any new hires and left 15 minutes before the end of her shift without authorization. The employer terminated the claimant on December 31, 2006, for insubordination.

The testimony of the employer and claimant differed. The administrative law judge finds the employer's testimony to be more credible because the claimant's testimony was internally inconsistent.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. She intentionally did what she wanted to do at work with no regard for the employer's instructions. When a claimant intentionally disregards the standards of behavior that

the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits in the amount of \$348.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's January 19, 2007 decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$348.00.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css