

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A LANE
Claimant

APPEAL NO. 09A-UI-14703-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**Original Claim: 08/30/09
Claimant: Respondent (2/R)**

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

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's September 21, 2009 decision (reference 01) that concluded Julie A. Lane (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on October 29, 2009. The claimant participated in the hearing and presented testimony from one other witness, Greg Jordan. Linda Fenner appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 26, 2004. She worked full-time as a donut maker and cook at the employer's Jesup, Iowa store. Her last day of work was September 3, 2009. The employer discharged her on that date. The stated reason for the discharge was multiple warnings for leaving food in the warmer beyond its expiration time.

When food is prepared and placed in the warmer, it is time-stamped so that after an hour it can be removed and destroyed. The claimant had received a written warning for failing to properly monitor and discard expired food on April 24, 2008. On June 3, 2009, she received a documented verbal warning for the same issue. On June 18, she again was given a written warning for the same issue; this warning indicated that if there was another occurrence, she would be discharged. In August 2009, Ms. Fenner, then the assistant manager, had verbally to remind the claimant to watch her times on the foods in the warmer.

There had been some general concern regarding some overall performance issues, and on September 2 there had been a discussion between the then store manager, Mr. Jordan, Ms. Fenner, and the area supervisor, in which it was discussed that when Mr. Jordan returned

from vacation on September 8 the claimant would be given a warning for her job performance; however, it was also discussed that if there was a repeat incident of allowing food to remain in the warmer beyond their allowed time, she should be discharged immediately.

On September 3 the claimant had placed some food in the warmer at about 6:00 a.m., which would expire at 7:00 a.m. At about 8:00 a.m., a customer brought up a piece of breakfast pizza to the counter where Ms. Fenner was working, and she saw it had expired at 7:00 a.m. She finished working with the customers who were waiting and at about 8:15 a.m. went and checked the warmer, where she found about four to six other items that had expired at 7:00 a.m., which she disposed of. She became busy with customers again, and at about 9:30 a.m. called the claimant into the office and discharged her.

The claimant established a claim for unemployment insurance benefits effective August 30, 2009. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's repeated failure to ensure that the expired food was timely removed after multiple warnings shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits 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 determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's September 21, 2009 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of September 3, 2009. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw