

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JODY B ANDERSEN  
4805 – 86<sup>TH</sup> #6  
URBANDALE IA 50322

CASEY'S MARKETING COMPANY  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-10875-CT  
OC: 09/12/04 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (Casey's) filed an appeal from a representative's decision dated September 30, 2004, reference 01, which held that no disqualification would be imposed regarding Jody Andersen's separation from employment. After due notice was issued, a hearing was held by telephone on November 1, 2004. Ms. Andersen participated personally. The employer participated by Lisa Evans, Assistant Manager, and Ryan Chamberlain, Cashier.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Andersen was employed by Casey's from June 6 until

September 14, 2004 as a full-time kitchen worker. She was discharged because of a customer complaint that she had refused to make pizza.

Casey's kitchen is open until 10:30 p.m. and pizza orders can be taken until 10:10 p.m. On September 13, business was slow and, therefore, Ms. Andersen had the kitchen cleaned and put away by 9:50 p.m. Customers came in at that time and asked the cashier if it was too late to order pizza. The cashier, Ryan Chamberlain, directed them to Ms. Andersen. When the customers questioned Ms. Andersen, she told them she had cleaned the kitchen but would make them a pizza anyway. The customers declined and left. She did not refuse to make pizza. The assistant manager was present during the exchange but did not intercede in the conversation or direct Ms. Andersen to do anything differently. After the customer complained to the corporate office, Ms. Andersen was discharged on September 14, 2004. She had not been disciplined for any matters prior to her discharge.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Andersen was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Andersen was discharged based on a contention that she refused to make pizza for a customer. This contention has not been established to the satisfaction of the administrative law judge. The administrative law judge found Ms. Andersen's testimony on the issue to be more credible. Although there was no need to tell the customer that the kitchen had just been cleaned, she did indicate a willingness to make the pizza in spite of this fact.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to establish disqualifying misconduct. Accordingly, benefits are allowed.

#### DECISION:

The representative's decision dated September 30, 2004, reference 01, is hereby affirmed. Ms. Andersen was discharged by Casey's but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/tjc