

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALLIE K LISLE
Claimant

APPEAL NO. 10A-UI-14226-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 09/12/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated October 8, 2010, reference 01, which denied benefits based upon her separation from Casey's Marketing Company. After due notice was issued, a telephone hearing was held on November 30, 2010. The claimant participated personally. The employer participated by Ms. Jamie Johnson.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Callie Lisle was employed by Casey's Marketing as a part-time cashier from October 29, 2008, until September 13, 2010, when she was discharged for violating company policy. Ms. Lisle was paid by the hour. Her immediate supervisor was Jamie Johnson.

The claimant was discharged based upon the employer's reasonable belief that Ms. Lisle had continued to violate company policy by wearing an exposed nose ring and by spending amounts of time not performing discernible duties during her work shift.

Ms. Lisle had been warned in August and suspended for three days at that time for similar conduct. It was the claimant's belief that she would again be suspended for a five-day period before being discharged.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 claimant was discharged after she continued to violate Casey's Marketing policy by wearing an exposed nose ring while working and by spending periods of time performing no discernible duties. Ms. Lisle was aware that her employment was in jeopardy for these reasons and that continued violation of the rules could result in her termination from employment. The claimant's immediate supervisor, the store manager, testified under oath that she observed Ms. Lisle via security camera violating these rules after being warned and that, based upon repeated complaints by a number of employees about the claimant's conduct, a decision was made to terminate Ms. Lisle from her work. Benefits are withheld.

DECISION:

The representative's decision dated October 8, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw