

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHERRIE L MOOS

Claimant

APPEAL NO: 11A-UI-14913-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/16/11

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 8, 2011 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Jane Eckerman, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2010. She worked as a full time cashier. The claimant sometimes worked on register #1, where customers bought lottery tickets. The employer's policy informs employees they are not allowed to purchase or play lottery while on duty.

During her employment, the employer sometimes talked to the claimant about cash shortages at her register. After the employer reviewed the transactions, the claimant understood the cash discrepancies had been found and resolved. Prior to October 17, the claimant's job was not in jeopardy.

After the employer learned on October 17 there were two incidents of lottery issues, the employer reviewed the video of the claimant's shift on October 12 and 15. On October 12, the employer observed the claimant on the video surveillance take three lottery tickets out of the drawer. The video then showed the claimant scratching a small area on the lottery tickets and scan the tickets on the cash register to see if the ticket was a winner. These were \$20 lottery tickets. The video also showed the claimant put the tickets back in the drawer after she printed a winning receipt for one of the tickets. The winning ticket paid \$25. Later, a customer purchased this same lottery ticket. When he came back to the store later and tried to cash the winning ticket, the computer indicated the employer had already paid out money on this ticket.

When the employer called the lottery commission, they learned the day and time the winning ticket had been cashed. This occurred during the claimant's shift.

The employer also learned a \$10 lottery ticket was missing from the drawer on October 15. Again, when the employer reviewed the claimant's shift, they observed her take two lottery tickets and do the same thing as she had done on October 12.

After reviewing the video tape of the claimant's shifts on October 12 and 15, the employer never saw her pay for either lottery ticket. Based on information from the lottery commission, the employer knew what time the tickets had been scanned on the computer. When the employer talked to the claimant on October 17, the claimant denied she had not paid for the lottery tickets. On October 17, 2011, the employer discharged her for theft—taking lottery tickets without paying for them.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the employer did not discharge the claimant for violating the employer's policy about not playing or buying lottery tickets while an employee works, this case demonstrates why the employer has this policy. The claimant admits she violated this policy, but did not take lottery tickets that she did not pay for.

This case revolves around the credibility of the witnesses. The best evidence, the video of the claimant's shifts on October 12 and 15, was not presented during the hearing. The employer's testimony about what the video showed is supported by the fact a customer later bought the same ticket the claimant won \$25 on. Also, even though the claimant asserted she attached the winning ticket to the receipt and put both in a binder, the employer did not find the ticket attached to the receipt. If a ticket had been attached, the claimant testified she would have signed the ticket. Based on the evidence presented during the hearing, the claimant did not pay for the lottery tickets she scanned on October 12 or 15. She committed work-connected misconduct by not paying for the lottery tickets, but also for scanning the tickets and then putting them back in the lottery draw and for playing the lottery during her shift. As of October 16, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's November 8, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 16, 2011. This disqualification continues until she 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw