

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY K HARTZLER
Claimant

APPEAL NO. 07A-UI-09035-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 08/26/07 R: 02
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated September 19, 2007, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 9, 2007. The claimant participated. The employer participated by Janice Enderson, Manager.

ISSUES:

The issues in this matter are whether the claimant was discharged for misconduct and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from approximately August 2002 until August 27, 2007 when she was discharged from employment. Ms. Hartzler held the position of second assistant manager and was employed on a full-time basis. The claimant's immediate supervisor was Janice Enderson. The claimant was discharged based upon an e-mail complaint from a company customer alleging that Ms. Hartzler had displayed a bad attitude by complaining about her work and personal problems to the customer. As the claimant had been warned in the past regarding attitude and rudeness to customers, a decision was made to terminate Ms. Hartzler from her employment. At the time the claimant was confronted by the most recent allegation, Ms. Hartzler did not deny the allegation or indicate that she felt her discharge was unjustified.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. The claimant was discharged based upon the most recent complaint from a company customer that the claimant had displayed a bad attitude or made

inappropriate comments. The evidence establishes that Ms. Hartzler had been repeatedly warned in the past regarding her attitude and rudeness to company customers and staff. When confronted about the most recent allegation, Ms. Hartzler did not deny the allegation nor indicate that her discharge was unjustified. The administrative law judge concludes that the claimant's conduct after being warned showed a disregard for the employer's interests and standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law.

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.

For the reasons stated herein, the administrative law judge finds that the claimant was discharged for misconduct. Benefits are withheld.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount \$828.00.

DECISION:

The representative's decision dated September 19, 2007, reference 01, is hereby reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant meets all other eligibility requirements of Iowa law. The claimant has been overpaid unemployment insurance benefits in the amount of \$828.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs