

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRED J SCHMIEDER

Claimant

APPEAL NO. 06A-UI-11335-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

**OC: 10/29/06 R: 01
Claimant: Respondent (2)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Casey's, filed an appeal from a decision dated November 17, 2006, reference 01. The decision allowed benefits to the claimant, Fred Schmieder. After due notice was issued, a hearing was held by telephone conference call on December 12, 2006. The claimant participated on his own behalf. The employer participated by Manager Kelly Box.

ISSUE:

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

FINDINGS OF FACT:

Fred Schmieder was employed by Casey's from April 5, 2005 until October 9, 2006. He was a full-time store associate. At the time of hire he received an employee handbook and training on the company policies and procedures. No alcohol is to be sold to minors and identification is required. Sale of alcohol is grounds for immediate discharge.

On October 7, 2006, another associate, Ashley, had just ended her shift and was still in the parking lot when she saw a customer leave the store with beer. She is a high school student and knew the customer personally from school, and knew that he was only 17. The associate contacted Store Manager Kelly Box and reported the incident, and asked that her name not be revealed to Mr. Schmieder as she was concerned it might affect the way he treated her.

Ms. Box called the claimant that same evening and asked if he had sold beer to anyone from whom he did not ask for identification. He admitted he had not asked for identification from all customers. The manager told him he had sold beer to a minor and that the store could held responsible for the sale, with negative consequences. She said would have to consult with her supervisor but that the incident could result in loss of his job. Ms. Box informed the claimant on October 9, 2006, that he was fired for selling beer to a minor.

Fred Schmieder has received unemployment benefits since filing a claim with an effective date of October 29, 2006.

REASONING AND CONCLUSIONS OF LAW:

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was aware of the employer's policy forbidding sale of alcohol to minors and the requirement to ask for identification. He sold beer to a minor as witnessed by an eye witness who knew the customer and knew he was not of age. Mr. Schmieder did not take the necessary precaution of obtaining identification before selling the alcohol. Although this was a single incident, a single incidence of misconduct can be disqualifying if the misconduct is a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Henry v. IDJS, 391 N.W.2d 731 (Iowa App. 1986). The employer could have been held legally responsible for the sale and fined or had its license to sell alcohol revoked. The claimant endangered the employer's business and this is conduct not in the best interests of the employer and he is disqualified.

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.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 17, 2006, reference 01, is reversed. Fred Schmieder is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,013.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css