

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL M HOWARD
Claimant

APPEAL NO. 11A-UI-02320-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 01/09/11
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Crystal Howard filed an appeal from a representative's decision dated February 25, 2011, reference 01, which denied benefits based on her separation from Casey's General Stores. After due notice was issued, a hearing was held by telephone on March 24, 2011. The employer participated by Mary Bohannon, Manager. Ms. Howard responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

ISSUE:

At issue in this matter is whether Ms. Howard was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Howard was employed by Casey's from December of 2009 until January 12, 2011. She worked from 25 to 30 hours each week as a clerk and pizza helper. She was discharged for selling tobacco products to a minor. Before selling tobacco products or alcohol, a clerk is required to request proof of age from any individual who appears to be age 27 or younger.

On January 11, 2011, the Bremer County sheriff's department conducted a "sting" operation at the store where Ms. Howard worked. According to the employer's video surveillance, she did not request proof of age before selling tobacco to an individual who turned out to be only age 16. When questioned, Ms. Howard indicated she thought the individual looked old enough. She was discharged the following day. The above matter was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 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. Howard was discharged for selling tobacco products to a minor. Her actions were in violation of the employer's policy as well as state law. Her only defense was that the individual appeared to be old enough to purchase the product. However, she was required to request proof of age for any individual who appeared to be under the age of 27. The administrative law judge is not inclined to believe that a 16-year-old appeared to be over 27. Even if an individual appeared to be of legal age, the employer still required proof of age if she appeared to be under 27.

Ms. Howard's conduct had the potential of adversely impacting the employer's business as selling tobacco products to minors is against the law. She was aware of the employer's policy and knew that selling tobacco to a minor would result in discharge. Her violation of the policy constituted a substantial disregard of the employer's interests and standards. For the above reasons, it is concluded that disqualifying misconduct has been established. Accordingly, benefits are denied.

DECISION:

The representative's decision dated February 25, 2011, reference 01, is hereby affirmed. Ms. Howard was discharged by Casey's for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs