

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MONICA M SAGERS**

Claimant

**APPEAL NO: 14A-UI-04020-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 03/23/14**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated April 10, 2014, reference 01, that held the claimant was not discharged for misconduct on March 12, 2014, and benefits are allowed. A telephone hearing was held on May 6, 2014. The claimant participated. Mary Hanrahan, Area Supervisor, and Alisha Weber, Representative, participated for the employer. Claimant Exhibits A, B and Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on June 23, 2010, and last worked for the employer as a full-time assistant manager on March 11, 2014. She received the employer policy for removal of company property and employee discount/purchase policy.

The employer area supervisor received a report from another store location claimant was receiving an unusual number of free pizzas. This report caused the supervisor to watch store videos on March 8, 9 and 10. There was nothing observed that caused the employer to conclude claimant was violating any policy related to the pizzas.

The supervisor saw claimant consuming some pop and food items. The supervisor could not find evidence of claimant payment. Customer Tubbs says he purchased a breakfast sandwich for claimant the employer questions. Claimant admits she should have used an employer provided mug for one drink but responded the employer had not enforced it. Claimant denies any other unauthorized purchases. She was not given the opportunity for presenting cash receipts and watching the store video.

The supervisor discharged claimant on March 12 for violating the store policy by taking/consuming property without paying for it.

## 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on March 12, 2014.

The employer went from investigating claimant about getting free pizzas to looking for something else when there was no evidence of wrong doing. The employer offered no evidence claimant had been disciplined for how she consumed employer pop and minor food items prior to March 8, 9 and 10. The evidence does not establish claimant committed any intentional violation of the employer policy.

**DECISION:**

The department decision dated April 10, 2014, reference 01, is affirmed. The claimant was not discharged for misconduct on March 12, 2014. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/css