

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RITA C LYNCH

Claimant

APPEAL NO. 10A-UI-13955-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/05/10

Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Casey's, filed an appeal from a decision dated September 29, 2010, reference 01. The decision allowed benefits to the claimant, Rita Lynch. After due notice was issued, a hearing was held by telephone conference call on November 23, 2010. The claimant participated on her own behalf. The employer participated by Area Supervisor Janice Henderson.

ISSUE:

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

FINDINGS OF FACT:

Rita Lynch was employed by Casey's from June 18, 2004 until August 2, 2010 as a full-time store manager. On July 19, 2010, Area Supervisor Janice Henderson discovered the claimant had failed to make a deposit on July 17, 2010. Deposits, or drops in the night deposit box, are to be made before the manager leaves the store on the next day. The company policy does not mandate discharge for failure to do this and the discipline is at the discretion of the area supervisor and the district manager.

The claimant admitted she had forgotten to make the deposit because on that day she did not need to go to the bank for change as she usually did, and the deposit remained locked in the safe. She was out of town July 18 through August 1, 2010, for a family medical emergency and was discharged by Ms. Henderson when she returned to work August 2, 2010.

Ms. Henderson maintained the claimant had failed to make a deposit on or about March 19, 2010, and as a result an e-mail was sent to all managers in her area reminding them of the policy. The claimant acknowledged she had received the e-mail, and it was discussed with her, as it was with all the managers, but she had not failed to make a deposit or night drop around that time. The memo was prompted by some other incident that did not involve the claimant.

The employer maintained it was this prior failure to make the deposit that contributed to the decision to discharge, but Ms. Henderson did not specify when that incident allegedly occurred. It was also considered that Ms. Lynch had not been enforcing a dress code violation because she did not agree with it. Ms. Henderson gave her a written warning in May 2010 about this and afterward the claimant did enforce the policy.

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The employer has asserted the decision to discharge was made on the basis of the claimant's prior failure to make a deposit in March 2010. Ms. Lynch denied this and Ms. Henderson has been unable to specify when this violation allegedly occurred. It cannot therefore be determined if such a failure actually occurred.

Without more evidence, the employer has not met its burden of proof to establish the failure to make the deposit on July 17, 2010, was anything other than a one-time error in judgment. There were no prior warnings for similar incidents and no final act of misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of September 29, 2010, reference 01, is affirmed. Rita Lynch is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw