

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAULA L MILLER
Claimant

APPEAL NO: 06A-UI-10121-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEYS MARKETING CO
CASEYS GENERAL STORE**
Employer

**OC: 09-17-06 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 11, 2006, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 31, 2006. Claimant participated with Jolene Miller, who also acted as her representative, and Todd Miller. Employer participated through Nikki Thompson.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time pizza maker and clerk from September 5, 2005 until September 15, 2006 when she was discharged. On September 15 employer conducted an audit for September 14, 2006 when claimant closed. Other clerks' lottery ticket records were balanced but claimant's records were missing one ticket that was either not recorded or not paid for. Employer had issued a previous verbal warning for two missing lottery tickets on September 11, 2006. Employer warned her in writing for a cash drawer shortage on August 14 of over \$40.00 and on August 15, 2006 for a shortage while she was training someone else and used his register without changing over to another drawer. Other shortages occurred on September 24, 2005, May 13, 19, 27, 28, July 26, and August 13, 2006. The register has a lock button if the employee goes to the restroom but lottery cards do not have a lock on them.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995).

Claimant's repeated failure to balance the cash drawer and lottery ticket sales after having established the ability to do so is evidence of her willful intent not to do so and is misconduct. Benefits are denied.

DECISION:

The October 11, 2006, reference 01 decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs