

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRYSTAL KNIGHT**

Claimant

**APPEAL NO. 11A-UI-02588-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S GENERAL STORES**

Employer

**OC: 12/05/10**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Casey's General Stores (employer) appealed an unemployment insurance decision dated February 22, 2011, reference 01, which held that Crystal Knight (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 29, 2011. The claimant participated in the hearing. The employer participated through Supervisor Mary Hanrahan. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time assistant manager from March 15, 2010 through December 9, 2010, when she was discharged. She had received seven warnings prior to the final incident, which occurred on December 5, 2010, when she worked off the clock for 27 minutes. The claimant worked on November 28, 2010 and punched out at 9:44 a.m. However, she then went into the office and worked until 10:11 a.m. Employees are not allowed to work off the clock per company policy; and since the employer had been previously sued for allowing employees to work off the clock, the issue was frequently reviewed and discussed with employees. The area supervisor covers eight stores and she had spoken with all employees regarding this policy. The store manager only became aware of the claimant's actions when she was investigating another matter involving a separate employee.

The claimant received a documented verbal warning on July 19, 2010 for punching out late and affecting budget hours. A second documented verbal warning was issued on August 10, 2010 for failing to correct manual credit cards. She received a warning memorandum that her bookwork needed to be completed by 8:00 a.m. The claimant's first written warning was issued on September 3, 2010 for punching out late and her second written warning was issued on September 13, 2010 for failing to follow proper call-in procedures. A third written warning was

issued to her on October 7, 2010 for failure to follow retail gas pricing policy. The fourth and final written warning issued to her on October 25, 2010 addressed multiple issues. The claimant had reported to work late several times, she failed to collect money for gas and could not provide a vehicle description, she ran out of a particular item and did not go to another store to get it, one of the gas pumps had to be bagged, and the last issue addressed was her failure to complete the weekly order in a timely manner. It was due on Friday and she did not finish it until Saturday, October 23, 2010.

The claimant had objections to each of these written warnings and had complained to the corporate office. She said she was close to quitting her employment. The claimant took issue with the fact that two other employees worked off the clock on December 5, 2010 but they were not terminated. These two employees worked under her management and while the employees informed the claimant about it, the claimant did not inform management about it. She said management knew about it, but the employer witness testified this was the first she had heard of these two employees working off the clock.

The claimant filed a claim for unemployment insurance benefits effective December 5, 2010 and has received benefits after the separation from employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on December 9, 2010 for working off the clock in violation of company policy after she had already received seven disciplinary warnings. She admits working off the clock but contends she did not do it intentionally and feels she was wrongly discharged. The claimant had the authority to correct the time records after the fact but failed to do so.

Additionally, she demonstrated a consistent pattern of disregarding the employer's policies and doing what she wanted to do. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

#### **DECISION:**

The unemployment insurance decision dated February 22, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw