

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CASSIDY S MITCHELL
Claimant

APPEAL 15A-UI-06787-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING CO
Employer

OC: 05/24/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 5, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on July 16, 2015. Claimant participated. Employer participated through Store Manager Mary Ellen Clubb. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store employee from October 26, 2012, and was separated from employment on May 14, 2015, when she was terminated.

On May 14, 2015, claimant came in to work even though her son was in critical condition and was hospitalized later that day. At about 11:30 a.m., right before claimant had to leave to take her son to the hospital, an underage person came in the store to purchase alcohol in furtherance of an undercover sting operation. Claimant was in a hurry and distraught over her son. In retrospect, claimant should not have gone to work that day.

On October 26, 2012, claimant signed employer's Selling Age Restricted Products policy. [Exhibit 1] The policy states that employer's first choice is for employees to use the register scanner to scan the customer's valid driver's license when selling age restricted products. Employer's second choice is for employees to enter the birth date from the customer's valid identification into the register's "Birth Date" screen. Claimant acknowledges her signature on the policy, but did not remember and was unaware of the policy on May 14, 2015. Claimant never had any previous warnings regarding the policy. Claimant had successfully been subjected to sting operations in the past.

On May 14, 2015, claimant did not scan the customer's identification using the register scanner. Instead, claimant manually entered the customer's birth date incorrectly into the register and sold the minor customer alcohol. Later that day, when claimant was returning from the hospital, she was served with a citation for her actions previously that day. Claimant called her manager, Mary Ellen Clubb, immediately. Employer's policy states that any employee who fails to properly follow employer's age restricted policy and procedure will be terminated from employment without exception. Claimant was terminated the same day, May 14, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits.

Infante v. Iowa Dep't of Job Serv., 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged—selling a minor customer an age restricted product—was merely a result of human nature in a stressful situation. In regard to any argument employer has about claimant's failure to scan the customer's identification, claimant had never been previously warned about this issue and was unaware she was violating a policy. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. In this case, employer did not show claimant intentionally acted against its best interest or demonstrated such repeated carelessness that would disqualify her from receiving unemployment benefits.

DECISION:

The June 5, 2015, (reference 01) unemployment insurance decision is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/pjs