

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STELLA E DEAKINS
2530 MACOMB AVE #7
SIOUX CITY IA 51106

CASEY'S MARKETING COMPANY
% TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09854-CT
OC: 08/15/04 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Stella Deakins filed an appeal from a representative's decision dated September 2, 2004, reference 01, which denied benefits based on her separation from Casey's Marketing Company (Casey's). After due notice was issued, a hearing was held by telephone on October 5, 2004. Ms. Deakins participated personally and Exhibits A and B were admitted on her behalf. The employer participated by Monica Von Seggern, Supervisor.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Deakins was employed by Casey's from May 13, 1991 until August 14, 2004. She was last employed full time in the kitchen. She was discharged after receiving an extensive series of warnings.

Ms. Deakins received nine written warnings regarding customer complaints during the course of her employment. The complaints always cited rudeness. The last complaint was approximately one week before the discharge. Ms. Deakins' coworkers complained to management that she did not always complete her duties during her shift. This was usually due to the fact that she did not have sufficient time. She acknowledged that there was at least one occasion on which she deliberately failed to perform her assigned duties. Her reason for doing so was that she felt others were not being disciplined for not performing their assigned work.

Individuals assigned to work in the kitchen are required to wear hats. The policy is consistent with health department regulations and is intended to minimize the opportunity for contamination of food products. Ms. Deakins did not always wear her hat because it interfered with her hair style. She would put on the hat if management came to the store. She had also been warned in the past about wearing jewelry in the kitchen in violation of the employer's dress code. Employees in the kitchen are only allowed to wear a wedding band but Ms. Deakins would sometimes wear earrings in the kitchen.

Employees are required to pay for all food product before consuming it, even if the food is no longer fresh enough to be sold to the public. Ms. Deakins was observed eating potatoes in the kitchen on July 13 but had not made payment for them. There was also an issue of Ms. Deakins working on the cash register after being told that she was not to do so. She had been taken off the registers because of shortages. In spite of knowing that she was not to operate the registers after she became a kitchen worker, Ms. Deakins did so in May of 2004.

Ms. Deakins received approximately 25 warnings during the course of her employment. Due to the compilation of problems, she was discharged on August 14, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Deakins was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Deakins often deliberately disregarded the employer's standards. She would only wear her hat if management was present. The fact that the hat detracted from her hair style was not good cause for violating the employer's standards. Her conduct in not wearing her hat could have subjected the employer to sanctions from the local health department. It also jeopardized the employer's interest in a sanitary food preparation area.

Ms. Deakins also deliberately disregard the employer's standards by operating the cash register after being told not to. She also deliberately violated policies by eating food without first making payment. Such conduct constituted theft. Although she later paid for the food, it was clear from her testimony that she had no intent of doing so until confronted by the employer. Ms. Deakins acknowledged that on one occasion, she intentionally failed to perform her own duties as a protest to other individuals not performing their duties. If she felt others were not performing their jobs, the matter should have been addressed through management.

Ms. Deakins was more than just an unsatisfactory employee. The problems identified by the employer represented more than just isolated lapses in judgment. They represented occasions on which Ms. Deakins violated policies and knew she was violating policies. Her failure to refrain from conduct which would cause customer complaints was also contrary to the employer's standards. If she had been discharged solely as a result of customer complaints, this might well be a different case given the length of her employment. The administrative law judge concludes that Ms. Deakins was discharged because of a pattern and practice of disregarding the known standards of employment. Accordingly, benefits are denied.

DECISION:

The representative's decision dated September 2, 2004, reference 01, is hereby affirmed. Ms. Deakins was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to

ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/