

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL C BENSLEY

Claimant

APPEAL NO. 11A-UI-14953-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/23/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 17, 2011, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on December 14, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Melinda Brooks, Mallory Johnson, and Rebecca Wilkinson participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a pizza maker for the employer from 2004 to October 26, 2011. She was informed and understood that under the employer's work rules, unauthorized removal of company property and theft were grounds for termination.

After receiving reports that the claimant's boyfriend was taking merchandise from the store while the claimant was working, the store manager watched the store from distance on October 26, 2011. She watched the claimant's boyfriend take garbage to the dumpster and put cans in the recycling bin. After he retrieved the cans from the bin and put them in his jacket, the store manager approached him asked what was in his jacket. He removed four full cans of Red Bull from his jacket. The claimant was aware that her boyfriend was going to take the Red Bull.

The store manager then went into the store and confronted the claimant about the Red Bull. She initially denied knowing about the cans of Red Bull, but later admitted that she knew that he was going to take them and said they did it because they were poor.

The employer discharged the claimant on October 28, 2011, for unauthorized removal of company property.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant was not credible at all. The fact that she was under stress when asked about the Red Bull would not logically cause a person to say that she knew that the boyfriend was taking the Red Bull and was taking it because they were poor. If she really did not know, she would have said that whether stressed out or not.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated November 17, 2011, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs