

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN M LEMIRE**

Claimant

**APPEAL NO. 11A-UI-01630-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

**CASEY'S GENERAL STORES**

Employer

**OC: 01/02/11**

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

Section 96.5-2-a – Discharge

Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated January 31, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on March 9, 2011. Claimant participated. The employer participated by Ms. Sherry Ackerman, Store Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Susan Lemire was employed by Casey's Marketing Company from April 14, 2010 until January 8, 2011 when she was discharged from employment. Ms. Lemire worked as a full-time assistant manager and was paid by the hour. Her immediate supervisor was Sherry Ackerman.

The claimant was discharged after she willfully provided untruthful information to the employer regarding a \$50.00 cash shortage. A review of company security tapes shows that Ms. Lemire had received \$50.00 in cash for a gasoline purchase on January 4, 2011. The tape showed that the claimant subsequently changed the transaction to make it appear as a credit card transaction. Later Ms. Lemire indicated to the company that the \$50.00 shortage was because the gas purchase customer was a "drive off." Subsequently Ms. Lemire indicated that the "drive off" customer had returned and repaid the amount.

Based upon the claimant's statement and review of the security tapes, the employer reasonably concluded that Ms. Lemire had intentionally falsified company records and had intentionally provided a false reason for the cash shortage. Ms. Lemire had received two previous warnings for cash handling issues and was discharged from employment.

The claimant denies misappropriating the \$50.00 in question. The claimant admits to lying to the employer about the matter because she could not explain the discrepancy.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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 of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this case the claimant was discharged following the investigation of a \$50.00 cash discrepancy that occurred on the claimant's work shift. Based upon a personal review of the security cameras and statements made by Ms. Lemire, the employer reasonably concluded that the claimant had falsified the reason for the cash shortage and had intentionally provided a false statement to the employer that the shortage was caused by a "drive off" when it was not. Based upon the evidence in the record, the administrative law judge concludes that the claimant's willful act of changing employer records and willfully providing a false statement to the employer

for the discrepancy showed a disregard for the employer's reasonable standards of behavior that it had a right to expect of its employees under the provisions of the Employment Security Act. Benefits are therefore withheld.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated January 31, 2011, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in

and been paid wages for insured work equal to ten times her weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs