

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE L POLK
Claimant

APPEAL NO. 14A-UI-03386-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/23/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated March 19, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 21, 2014, by telephone conference call. The claimant participated personally. Employer participated by Karen Hildebrand, store manager. The record consists of the testimony of Karen Hildebrand; the testimony of Vickie Polk; Claimant's Exhibits A-Q; and Employer's Exhibits 1-5.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a convenience store chain. The claimant worked at the store located in Winterset, Iowa. The claimant was hired on October 18, 2012. Her job was full-time cashier. Her last day of work was February 28, 2014. She was terminated on February 28, 2014. She was terminated because she sold alcohol to a minor.

The incident that led to the claimant's termination occurred on February 28, 2014. The claimant was the only cashier in the store and the store was busy because it was Friday night and a snow storm had been predicted. The claimant was in a hurry and had as many as four customers in line. She was getting complaints from customers. The claimant sold a can of beer to a twenty-year-old customer. She did not ask for identification. The police were conducting a sweep for sales of alcohol and the claimant was given a citation for having sold the can of beer.

The employer has a policy, of which the claimant was aware, that if a restricted product was sold to an underage customer, the result would be termination.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The definition of misconduct excludes errors of judgment or discretion in isolated instances or simple negligence. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The evidence showed that the claimant made an error when she sold a twenty-year-old customer a can of beer on February 28, 2014. The claimant credibly testified that she was in a hurry and there were a lot of complaining customers present. She said she simply forgot to ask for the identification. The claimant was issued a citation. There is no evidence that she had been written up for this type of conduct specifically or for any type of conduct or performance issues. The most reasonable inference from the evidence is that the claimant made a mistake and committed a simple act of negligence. This is not disqualifying misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 19, 2014, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs