

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCIA K FREDERICK

Claimant

APPEAL NO. 09A-UI-04621-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 02/15/09

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Casey's Marketing Company (Casey's) filed an appeal from a representative's decision dated March 11, 2009, reference 01, which held that no disqualification would be imposed regarding Marcia Frederick's separation from employment. After due notice was issued, a hearing was held by telephone on April 27, 2009. Ms. Frederick participated personally and offered additional testimony from Barb Figgins. The employer participated by Jacqueline Mosher, Store Manager. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Frederick was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Frederick was employed by Casey's from July of 2002 until February 16, 2009. She was last employed full time as an assistant manager, a position she assumed in June of 2005. She was discharged for falsifying a company document. The employer requires a daily audit of all cigarettes on hand. The audit includes both loose packs and cartons. If the audit is off by more than five packs, it has to be redone.

Ms. Frederick received a written warning on December 1, 2008 because of problems with her cigarette audit. She was adding in cartons that were not there and adding deliveries that were not yet received. She was warned that she could be fired if there were future problems of a similar nature. The decision to discharge was prompted by the audit done on February 7, 2009. Ms. Frederick submitted an audit report indicating she had counted all cigarettes. However, she only counted the cartons that were under the counter and two rows of the cigarettes kept on the shelves behind the counter. Her actions were observed on the surveillance camera.

The employer learned of the false audit document on February 11. Ms. Frederick did not work again until February 16. She was discharged at that time. She filed a claim for job insurance

benefits effective February 15, 2009. She has received a total of \$3,614.00 in benefits since filing her claim.

REASONING AND CONCLUSIONS OF LAW:

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. Frederick was discharged for falsifying her cigarette audit. She represented that she had conducted a full audit when she had only counted the cartons and two of the rows behind the counter. She knew or should have known, based on the prior warning, that the accuracy of the audits was important.

If the employer is not provided accurate information concerning its inventory, it cannot obtain accurate information concerning losses. The employer had the right to expect Ms. Frederick to count each pack as required and not guess at the number of packs of cigarettes on hand. Her conduct was contrary to what the employer had the right to expect from an assistant manager. This is not a case in which she miscounted cigarettes. It is a case in which she did not conduct a full count as verified by the surveillance tape. Her actions constituted dishonesty, which is clearly contrary to the standards an employer has the right to expect. For the reasons stated herein, it is concluded that disqualifying misconduct has been established and benefits are denied.

Ms. Frederick has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated March 11, 2009, reference 01, is hereby reversed. Ms. Frederick was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Frederick will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs