

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONYA N MAJOR
Claimant

APPEAL NO. 17A-UI-12079-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 11/05/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tonya Major (claimant) appealed a representative's November 17, 2017, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 14, 2017. The claimant participated personally. The employer participated by Amanda Courtois, Store Manager. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 26, 2016, as a part-time store employee but the claimant worked full-time hours. The employer did not give the claimant a copy of the employer's handbook.

On July 6 and October 12, 2017, the employer issued the claimant written warnings for not reporting her absence when she was sick. On July 10, 2017, employer issued the claimant a written warning after the claimant did not follow procedures. She did not ask for identification when the adult purchased alcohol or tobacco. On July 25, 2017, the employer issued the claimant a written warning for being tardy for work after the claimant overslept. On September 19, 2017, the employer issued the claimant a written warning for not performing cleaning duties. On October 27, 2017, the employer issued the claimant a written warning when a co-worker took the telephone off the hook so no other food other could come in. The co-worker was not reprimanded. The employer notified the claimant each time that further infractions could result in termination from employment.

On November 4, 2017, an employee took a telephone call from a customer who ordered a pizza. The employee handed the claimant the order. The claimant gave the order to co-worker

Jenny. The claimant told Jenny she was going to break. The claimant took a ten to fifteen minute break with her assistant manager. When she returned, Jenny had just started making the pizza. The customer had to wait for the pizza because neither Jenny nor the claimant made the pizza. The store manager terminated the claimant on November 6, 2017, for taking a break rather than performing her duties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant did not properly report absences, wait on customers, check customer identification, clean her work area, or make food that was assigned to her. The claimant's disregard of the

employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's November 17, 2017, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs