

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SIERRA G LUMSDEN
Claimant

CASEY'S MARKETING CO
Employer

APPEAL 14A-UI-08269-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/20/14
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 6, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2014. Claimant participated with Cheyanne Brown. Employer participated through area supervisor Michelle Kraus. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assistant manager and was separated from employment on June 27, 2014. A subordinate second assistant manager asked her to get change from the bank, which either employee could have done. Store manager since February 1, 2014, Vincent Shepherd, was at a meeting and asked her earlier to go to another Casey's store but did not know she was going to stop at home to pick up her roommate's children. While in possession of store's money and on the clock she stopped at home to get her roommate's children (ages 10 and 7) before stopping at the bank to get change for the evening shift.

The claimant received the employer's honesty and integrity policy that prohibits leaving for personal reasons while on the clock and improper cash handling that calls for discipline up to termination for a first offense. (Employer's Exhibit 1, p. 2, 10-13) The employer had not previously warned claimant her job was in jeopardy for the same reason but had been warned about disclosing confidential information and disregarding instruction. (Employer's Exhibit 1, pp. 3, 8)

Kraus was not aware former interim manager Vicki Carter knew claimant ran a bank errand in December 2013, while off the clock. Kraus knew that Shepard had stopped at Starbucks on the way back from making bank deposits when he had no cash or non-employees with him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is responsible for the conduct of its employees while working and therefore has an interest in the safety and security of its employees in handling cash, as well as preservation of assets of the employer. Claimant violated those reasonable rules and expectations by running a personal errand while on company time and with non-employees in the car with her. Claimant's actions were contrary to the best interests of the employer and the safety of herself and her roommate's children. This was misconduct even without prior warning. Benefits are denied.

DECISION:

The August 6, 2014, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css