

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JANNA L VANDONGE**  
Claimant

**APPEAL NO: 10A-UI-09123-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORES**  
Employer

**OC: 05/23/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Casey's Marketing Company/Casey's General Stores (employer) appealed a representative's June 16, 2010 decision (reference 01) that concluded Janna L. VanDonge (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 12, 2010. The claimant participated in the hearing. Lynette Reekers appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 18, 2007. She worked full time as manager of the employer's Sioux Center, Iowa convenience store. She worked on a salary basis, but her base hours were Monday through Friday, 4:30 a.m. to 1:30 p.m. Her last day of work was May 25, 2010. The employer discharged her on that date. The reason asserted for the discharge was not accurately reporting her hours and not clocking herself out.

The claimant was dealing with an illness in May 2010 which occasionally resulted in a sudden need for her to leave work. Because of this condition, on May 7 she left work at 10:27 a.m. but did not clock out at that time. She later called back to the store at about 1:50 p.m. and had a clerk clock her out. The next day she adjusted the time report to show she had left at 11:00 a.m.; she made an estimate of the time, rather than going to the security camera footage which would have indicated the 10:27 a.m. time. She had not believed the exact time was necessary as she was on salary; also, at the time she left, she had called her supervisor, Ms. Reekers, and had left a message she was leaving. Again on May 13 she had to leave abruptly at 5:27 a.m. without clocking out, but calling and leaving a message for Ms. Reekers. She later called back to the store and had an employee clock her out at 6:18 a.m. She failed to

subsequently adjust her time out as she forgot and had not considered it a priority as she was on salary.

Ms. Reekers was aware of these issues on or by May 13, as a concern was reported to her at that time by the assistant manager, who was being called upon to cover the claimant's hours when she had to leave. The issue was not addressed with the claimant until May 25 at the time of discharge. No prior discipline had been issued to the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her failure to correct her hours on the clock and her failure to clock herself out. Under the circumstances of this case, the claimant's failures were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or were due to a good faith error in judgment or discretion. Further, there would be no current act of misconduct as required to establish work-connected misconduct, as the most recent incident occurred 12 days prior to the employer informing the claimant there was a concern. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 16, 2010 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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