

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RILLA S OHL
Claimant

APPEAL NO. 10A-UI-05070-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/28/10
Claimant: Respondent (2R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated March 26, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on May 19, 2010. Although duly notified, the claimant did not respond to the notice hearing and did not participate. The employer participated by Rosy Spellers, Area Supervisor.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Rilla Ohl was employed by Casey's Marketing Company from June 23, 2008 until March 2, 2010 when she was discharged from employment. The claimant held the position of full-time assistant manager and was paid by the hour. Her immediate supervisor was Henry Nentl.

The claimant was discharged when she violated company policy by cashing ten insufficient funds checks at company facilities. At the time of hire employees are informed that they are subject to discharge if they cash insufficient funds checks at the employer's facilities. A decision was made to terminate the claimant when it was determined that she had violated company policy on numerous occasions by cashing a total of ten insufficient funds checks. The claimant did not make restitution to the company.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The evidence in this case establishes that the claimant was aware of the company policy that prohibited employees from cashing insufficient funds checks at company facilities. The evidence further establishes that the claimant was aware of the policy and knew that she would be subject to discharge if she violated the policy. Ms. Ohl was discharged after it was determined that she had cashed ten insufficient funds checks in the amount of approximately \$500.00 at company facilities. The checks cashed by the claimant did not have sufficient funds to be negotiated and the claimant knew or should have known that her conduct was in violation of her employer's reasonable standards and behavior and conduct. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated March 26, 2010, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing the claimant meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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