

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA K FRYMOYER
Claimant

APPEAL NO. 08A-UI-07539-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/20/08 R: 03
Claimant: Respondent (2-R)

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

STATEMENT OF THE CASE:

Casey's Marketing Company filed an appeal from a representative's decision dated August 13, 2008, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on September 13, 2008. Although the claimant was duly notified, the claimant failed to respond to the hearing notice and did not participate. The employer participated by Lori Arnold, area supervisor, and Robin Bengel, store manager.

ISSUE:

The issues in this matter are whether the claimant was discharged for misconduct and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from August 2006 until July 17, 2008, when she was discharged for violating company policy. The claimant held the position of second assistant manager and was employed on a full-time basis. The claimant was paid by the hour.

The claimant was discharged when she continued to work unauthorized time off the clock after being specifically warned. Ms. Frymoyer had been warned by the company's area manager, as well as the store manager, regarding working unauthorized time without clocking in. The claimant was informed that the practice violated law and subjected the employer to potential liability. Although warned, the claimant continued the practice and was discharged on July 18, 2008, when it was determined that the claimant had continued to work unauthorized time without clocking in, in violation of the warnings that had been served upon her.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Frymoyer was discharged for misconduct in connection with the employment. It does.

The evidence in the record establishes that the claimant was aware of the company policy that prohibited employees from beginning work prior to their work shift and/or working off the clock. The claimant was aware that any time discrepancies from the normal time scheduled must be approved by company management, including authorization for working off the clock, but continued to do so. This conduct showed a willful disregard for the employer's interests and reasonable standards of behavior that it had a right to expect of its employees under the provisions of the Iowa Employment Security Act.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged under disqualifying conditions. Unemployment insurance 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 August 13, 2008, reference 01, is hereby reversed. The claimant was discharged for misconduct in connection with her employment. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided she meets all other eligibility requirements of Iowa law. The matter of any overpayment is remanded to the Claims Division for determination as to whether there has been an overpayment, the amount of the overpayment, and whether the claimant is liable to repay those benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw