

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building, 4TH Floor
Des Moines, Iowa 50319
eab.iowa.gov**

REBECCA A THEIN

Claimant

and

CASEYS MARKETING COMPANY

Employer

: **APPEAL NUMBER:** 23B-UI-01367

: **ALJ HEARING NUMBER:** 23A-UI-01367

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: **EMPLOYMENT APPEAL BOARD
DECISION**

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NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 24.32-1A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below. The Board would also acknowledge that the Claimant did *not* participate in the hearing.

FINDINGS OF FACT:

The Claimant, Rebecca Thein, worked for Casey's Marketing from November 1, 2020 until December 21, 2022 as a full-time kitchen manager. The Employer provided a copy of its workplace conduct policy. One of those policies specifically provides that termination may result in the event of a "[V]iolation of any rule, policy, or procedure, whether included in this Guide or elsewhere, or stated orally by your Leader." (Exhibit 2)

The Claimant acknowledged receipt of this policy, which the Employer provided a copy to the Claimant. (Exhibit 3) In addition, employees are trained to *never* activate gift cards over the phone. The Employer had to terminate a prior employee for activating a gift card for about \$1,200-\$1,400 over the phone about a year ago. The Employer also trained the Claimant and all its employees that should someone call requesting activation of gift cards over the phone, they are to immediately hang up the phone. This policy is verbally reiterated routinely to employees.

The Claimant received a verbal coaching for adding funds to a gift card for a customer in the store, which was against store policy. During the Claimant's shift on December 20, 2022, the Claimant answered a call from an unknown caller who requested that she activate two gifts cards totaling \$1,000 over the phone, which she obliged. The Claimant told the Employer the following day about the transaction. She admitted knowing that she wasn't supposed to do that, but that she activated the cards anyway. The Employer terminated the Claimant for violating its policy regarding gift cards.

REASONING AND CONCLUSIONS OF LAW:

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.

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).

Iowa Code section 96.5(2)d provides:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

d. For the purposes of this subsection, “misconduct” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee’s contract of employment. Misconduct is 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...

The record establishes the Claimant received training, specifically, on how and when to authorize gift cards. She signed the acknowledgement of receipt of the Employer’s policies, and was repeatedly reminded throughout her employment about gift card procedure. The Claimant knew what was expected of her. The Employer’s testimony that she admitted knowing what she did was wrong further corroborates the Claimant had knowledge and understanding that her authorization over the phone was a terminable offense, yet she followed through with it anyway. Such behavior can only be characterized as a blatant disregard for the Employer’s interests. The Claimant did not participate in the hearing, and therefore was unavailable to refute the Employer’s testimony. Based on this record, we conclude the Employer satisfied their burden of proof.

DECISION:

The administrative law judge’s decision dated March 1, 2023 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)”a”.

James M. Strohman

Ashley R. Koopmans

AMG/fnv

Myron R. Linn