

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUE SCHULZ

Claimant

APPEAL NO: 12A-UI-02836-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 02-05-12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 13, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on April 16, 2012. The claimant participated in the hearing. Lorrie Marchall, Store Manager and Theresa Heck, Cashier/Cook, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier/cook for Casey's Marketing Company from April 22, 2011 to January 22, 2012. On January 21, 2012, an off-duty cashier went to Store Manager Lorrie Marchall's house and told her she thought Ms. Marchall should go to the store because the claimant was 45 minutes late and appeared to be intoxicated. When Ms. Marchall arrived the claimant was in her car smoking and Ms. Marchall went into the store. Other employees told her the claimant appeared disoriented and was "acting goofy" and stated she was late because she drove her car into a ditch. Ms. Marchall went into her office where she found the claimant's coat, purse and a package of opened cookies. The claimant returned to the store and went to the office. Ms. Marchall asked her what was going on and then asked her how much she had to drink and the claimant stated, "Some." The claimant did not have a receipt for the cookies and had been eating them in violation of the employer's policy. Ms. Marchall observed the claimant's face was red and her eyes were glossy and teary. She also smelled the faint odor of alcohol on the claimant. Ms. Marchall sent the claimant home. She viewed the video surveillance of the claimant's time at the store that day and noticed she picked up the cookies approximately five minutes after arriving, did not pay for them, and was eating them at the register while waiting on customers. Cashier/Cook Theresa Heck observed the claimant was struggling at the register and had a line so she went to help the claimant and noticed she was getting about two inches away from the register when trying to ring customer's

purchases. She was also having difficulty counting back customers' change and customers were looking at each other. Ms. Heck stated the claimant's words were slurred and her eyes were half open. All of the employees, including Ms. Marchall, who had contact with the claimant, believed she was intoxicated so Ms. Marchall did not send her to be tested for intoxication. The claimant called in the next day to ask about the status of her job and was told her employment was terminated for being intoxicated on the job and failing to pay for the cookies. The claimant testified she was disoriented because she put her vehicle into the ditch and had been without her anti-depressant, Lexapro, for a few days. She denies she was intoxicated but admitted she did not pay for the cookies before eating them. The claimant said she had been at a friend's house the evening before and had three or four beers that night and stayed there to be safe. She was on her way home from her friend's house in the late afternoon of January 21, 2012, when she went into the ditch.

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 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.

While all signs point to the claimant being intoxicated at work January 21, 2012, the employer chose not to send her for a breathalyzer test, relying on witness observations, and allowed her to drive home. The claimant's testimony that she was disoriented because she had been off her

Lexapro for a few days was not persuasive and the fact that her eyes were red and glossy, her words slurred, she had great difficulty on the register, and had put her vehicle in the ditch and was 45 minutes late for work makes it more likely than not that she was under the influence of alcohol while at work January 21, 2012. The claimant also grabbed a cup of cookies and was eating them at the register and then put them in the back room with her coat and purse without paying for them in violation of the employer's policy which requires payment before consumption and prohibits employees from eating in any public area of the store. There is no question that the claimant violated that policy January 21, 2012. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The March 13, 2012, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css