

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

KATIE E BROWN

Claimant,

and

CASEYS MARKETING COMPANY

Employer.

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HEARING NUMBER: 08B-UI-09253

EMPLOYMENT APPEAL BOARD
DECISION

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: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Findings of Fact as follows:

The claimant told Tami, the manager, that she was not going to sign the write-up. Tami warned Ms. Brown that if she did not sign the write-up, she would be fired. (Exhibit 1, unnumbered p. 10 - Fact-finding Worksheet for Misconduct)

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law as follows:

This case could also be analyzed as a discharge for which misconduct was established. A claimant's

refusal to sign a written warning after being told that signing was merely an acknowledgement of receipt and not an agreement of its contents was misconduct if the claimant failed to sign. Green v. Employment

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Appeal Board, 299 N.W.2d 651 (Iowa 1980) By the claimant's own admission, she knew that failure to sign the written warning would result in her termination. Thus, her behavior was a deliberate disregard of the employer's directive. For this we would conclude that the employer satisfied their burden of proof with regard to a discharge for misconduct.

An overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/ss