

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L JOHNSON
Claimant

APPEAL NO. 09A-UI-08928-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/10/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 11, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 8, 2009. Claimant participated personally. Employer participated by Nancy Norse. Exhibit 1, pages 1—3, was admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Employer discharged claimant on May 12, 2009 because he did not follow company policy on bank deposits and cash handling. The claimant was an assistant manager at a Casey's store. On May 10 and 11 the claimant failed to take the daily deposits to the bank. The claimant could not get the deposit records to reconcile on Saturday May 10 and did not make the night deposit as he was attempting to reconcile the deposit before he took them to the bank. The next morning, May 11, the claimant told the store manager of his difficulties with reconciling the deposit and she said she would look at the problem. The store manger was aware the deposit had not been made and did not direct the claimant to make the deposit. The deposit accounts still did not balance on May 11 and the claimant did not deposit the funds. The claimant had not received any prior warnings about deposits or cash handling. The claimant had received training on the employer's procedures for cash handling and deposits.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Supreme Court has held that excessive is more than one. While three is a reasonable interpretation of excessive based on current case law and Webster's Dictionary, the interpretation is best derived from the facts presented.

The claimant did not follow the company's procedure when he did not make the deposits on May 10 and 11. He was trying to reconcile the accounts before the deposit. He spoke at the store to his supervisor, Store Manager Patti Haley, the next day and informed her of the problems and she indicated she was going to look at the matter. The claimant's action appears to be at most an isolated instance of poor judgment in not following the proper procedure. He informed his supervisor and she did not tell the claimant to make the deposit that day. Not every mistake or failure to follow procedure is job related misconduct for unemployment purposes. The claimant was in good faith trying to reconcile his accounts and spoke to his manager about the problems he was having with the accounts.

The administrative law judge holds that the evidence has not established that claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning cash handling and deposits.

DECISION:

The decision of the representative dated June 11, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/pjs