

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY S ELAM

Claimant

APPEAL NO. 09A-UI-07463-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 04/12/09

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Casey's Marketing Company filed an appeal from a representative's decision dated May 8, 2009, reference 01, which held that no disqualification would be imposed regarding Tracy Elam's separation from employment. After due notice was issued, a hearing was held by telephone on June 10, 2009. Ms. Elam participated personally. The employer participated by Ann Harrison, Manager. Exhibits One and Two were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Elam was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Elam was employed by Casey's from March 23, 2005 until April 10, 2009. She was employed full time as a kitchen worker. She was discharged due to insubordination. On April 10, 2009, the manager, Ann Harrison, asked another employee to have Ms. Elam bring the mop bucket to the cooler. When directed to clean the cooler, Ms. Elam said she could not do it that day because she had to leave for a doctor's appointment. When told she could not leave early, she stated that she would. When Ms. Harrison repeated that she had to stay and clean the cooler, Ms. Elam said "the fuck I am" and went to the kitchen area of the store.

After approximately ten minutes, Ms. Harrison approached Ms. Elam in the kitchen and discharged her. During the ten minutes, Ms. Elam had not performed any of her remaining duties, such as making sure all boxes in the kitchen were closed or boxing up donuts. She did not have a doctor's appointment scheduled for that day but did need to schedule one. She was scheduled to be off work at 2:00 p.m. It was approximately 1:20 p.m. when Ms. Harrison first spoke to her about cleaning the cooler.

Ms. Elam had a prior history of not always wearing gloves when handling food and sometimes being out of uniform. She had also been verbally warned about smoking in front of the store and taking too many cigarette breaks.

Ms. Elam filed a claim for job insurance benefits effective April 12, 2009. She has received a total of \$1,344.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Elam's discharge was prompted by her insubordination of April 10. She was given a specific directive to clean the cooler, although she maintains she was directed to stock the cooler. Whichever it was, the fact remains that she refused to obey the directive. Although she told the employer she had a doctor's appointment, she did not have one. She needed to make an appointment but would have had sufficient time to make an appointment after she got off work at 2:00 p.m. She had at least 40 minutes to work on stocking or cleaning the cooler before her shift ended for the day. Moreover, the refusal to perform the assigned task was accompanied by the use of profanity.

It is noteworthy that Ms. Elam had other kitchen duties to perform before her shift ended on April 10. After she refused to clean or stock the cooler, she went to the kitchen but did not perform the duties she was expected to perform. She had been away from the cooler for ten minutes but had not closed the lids on boxes or boxed up the donuts. Her failure to work on those duties exemplifies her attitude towards the employment. Ms. Elam's blatant refusal to perform an assigned task on April 10 constituted a substantial disregard of the standards of behavior the employer had the right to expect. Since there was no justification for the refusal, it is concluded that misconduct has been established. As such benefits are denied.

Ms. Elam has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated May 8, 2009, reference 01, is hereby reversed. Ms. Elam was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insurance work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims

to determine the amount of any overpayment and whether Ms. Elam will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css