

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN SCHWANTES

Claimant

APPEAL NO. 09A-UI-06303-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

Original Claim: 03-08-09

Claimant: Appellant (2)

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 15, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 15, 2009. The claimant participated in the hearing. Pam Marts, Store Manager, participated in the hearing on behalf of the employer.

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 clerk for Casey's from February 11, 2009 to March 5, 2009, when she was discharged for giving away one slice of pizza. On February 28, 2009, the cook told the claimant to charge the customer for one piece of pizza as opposed to two. The claimant assumed there was something wrong with one slice of pizza and did not know her actions violated the employer's policy. She charged the customer for only one piece of pizza; a customer saw what happened and reported it to the employer. In another instance, the claimant told some kids not to worry about the change and she deposited eight cents of her own money to cover the shortage.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for giving away one piece of pizza, as directed by the cook, instead of charging for it. Misconduct must be substantial in nature to support a disqualification from unemployment benefits. Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1982). The focus is on deliberate, intentional, or culpable acts by the employee. Id. The claimant had worked for the employer less than one month and was following directions from the cook. There is no evidence of willful misconduct. The claimant's actions do not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

The employer is not a base period employer and its account is not subject to any charges during the claimant's current benefit year. If the claimant establishes a subsequent benefit year, the wage credits she earned from February 11, 2009 to March 5, 2009, would be subject to charge since the employer discharged her for non-disqualifying reasons.

DECISION:

The April 15, 2009, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw