

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BAMBI RANKIN
Claimant

APPEAL NO: 15A-UI-04811-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 03/29/15
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 9, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 2, 2015. The claimant participated in the hearing. Brianne Ploog, 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 part-time donut maker for Casey's Marketing Company from November 19, 2012 to March 26, 2015. She was discharged for attempting to take two bottles of Mountain Dew from the employer's premises without paying for it.

In late February or early March 2015 another employee observed the claimant take two bottles of Mountain Dew from the cooler and go into the freezer and when she came out of the freezer she no longer had the Mountain Dew. The employee notified the employer of the situation the day it occurred and the employer began keeping a close watch on the claimant. Approximately one week later the employer saw the claimant again remove two Mountain Dew bottles from the cooler and take it to the freezer. The claimant noticed the employer watching her and returned from the freezer with the two bottles of Mountain Dew and stated, "Don't let me forget to pay for these."

On March 26, 2015, the employer counted the Mountain Dew in the cooler and noted there were six bottles sold that morning. The claimant then put on her winter coat and went to the cooler and then the freezer. While the claimant was in the freezer the employer counted the number of bottles of Mountain Dew and there were eight gone. No customer had purchased Mountain Dew between the time the employer counted how many were gone before the claimant went to the cooler and when the employer counted the bottles that were gone after the claimant went to the cooler and freezer. The claimant then went outside to take trash out and the employer

followed her, believing she planned to put the two bottles of Mountain Dew in her van. The claimant saw the employer following her and did not go to her van but returned to the store and immediately went to the restroom with her coat still on. After she exited the restroom the employer went in and found two bottles of Mountain Dew buried at the bottom of the trash can and covered with paper towels. The claimant then clocked out and left the employer's premises. The employer called her supervisor and human resources to ask how they wanted to handle the situation and was directed to terminate the claimant's employment for unauthorized removal of company property which is a violation of the employer's honesty and integrity policy. The employer called the claimant back to the store that afternoon and notified her that her employment was terminated.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment

insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts of omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant denies having any Mountain Dew March 26, 2015, the preponderance of the evidence shows the claimant removed the two bottles of Mountain Dew from the cooler, took them with her into the freezer and put them under her coat, and walked out to the trash, near where her van was parked, with the bottles still under her coat. When the employer followed her outside the claimant walked back into the store and went directly to the restroom with her coat on. Although the claimant denies putting the bottles in the restroom garbage can under a pile of paper towels where the employer found them immediately after the claimant left the restroom, no one else used the restroom during that time. The employer had counted the bottles of Mountain Dew that had been sold from the cooler already and determined six were missing. When she counted after the claimant had been to the cooler there were eight missing, without any having been sold in the meantime.

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 are denied.

DECISION:

The April 9, 2015, 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

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