

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CAROLINE S GIMM
3019 W 66TH ST
DAVENPORT IA 52806

CASEYS MARKETING CO
CASEYS GENERAL STORE
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-02302-HT
OC: 01/30/05 R: 04
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Casey's General Store (Casey's), filed an appeal from a decision dated February 25, 2005, reference 01. The decision allowed benefits to the claimant, Caroline Gimm. After due notice was issued a hearing was held by telephone conference call on March 22, 2005. The claimant participated on her own behalf. The employer participated by Area Supervisor Beth McBride and Assistant Manager Breanna Osborne.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Caroline Gimm was employed by Casey's from May 9, 2001 until January 27, 2005. She was a full-time store manager.

On January 26, 2005, Area Supervisor Beth McBride met with Ms. Gimm and Assistant Manager Breanna Osborne to resolve some disputes. The second shift people were allegedly not performing their duties, leaving extra work for the first shift. During the course of that meeting it was revealed that Ms. Gimm was allowing employees to eat "stale" food without paying for it. Stale food is the food prepared at the store, such as sandwiches, potato wedges and pizza, which are put in a warmer. They are thrown out after being in the warmer for an hour. The company policy strictly prohibits any employee from consuming any food, including "stale food" without first paying for it. Doing so is considered theft.

The claimant acknowledged she "knew" about it but had other problems in the store to deal with first. Ms. McBride said she would have to consult with her supervisor about the matter but there was a strong likelihood of discharge. She contacted her supervisor after leaving the store and the decision was made to discharge the claimant. Ms. McBride notified her of the discharge the next day.

Caroline Gimm has received unemployment benefits since filing a claim with an effective date of January 30, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer's policy strictly prohibits employees from eating any food for which they have not paid. The claimant was aware of, and continued to allow, her subordinates to violate this policy. Although the stale food was going to be thrown out, the employer considers it to be the property of Casey's until it arrives at the landfill. It was the claimant's knowing disregard for the employer's policies and procedures which precipitated her discharge. This was not a one-time occurrence but an on-going course of conduct which resulted in all the employees in the store violating the company policies, encouraged to do so by the claimant. This is best and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 25, 2005, reference 01, is reversed. Caroline Gimm is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$2,170.00.

bgh/tjc