

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER M GRAY**  
Claimant

**APPEAL NO: 13O-UI-11908-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 06/23/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Heather M. Gray (claimant) appealed a representative's July 15, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 19, 2013. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Kelsey Owen appeared on the employer's behalf. There had been a prior hearing and decision in this matter, but after appeal to the Employment Appeal Board, this matter was remanded to the Appeals Section for a new hearing, because the claimant had moved from the address to which the notice of that hearing had been sent and did not receive the notice until after the scheduled date of that hearing. For the hearing in this matter, the administrative law judge reviewed the address as shown on the claimant's appeal to the Board and verified that the notice for the current hearing was sent to the address the claimant had provided to the Board; however, the claimant still did not respond or participate in the newly scheduled hearing. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**OUTCOME:**

Affirmed. Benefits denied.

**FINDINGS OF FACT:**

The claimant started working for the employer on May 1, 2012. She worked part time (about 30 hours per week) as an associate at the employer's Ankeny, Iowa store. Her last day of work was June 25, 2013. The employer discharged her on that date. The stated reason for the discharge was giving food away for free to a friend.

On June 20 a friend of the claimant came into the store and went to the kitchen where the claimant was working. She did complete an order for two pizzas and did go to the cashier and paid for the two pizzas. Other associates in the store heard the friend asking the claimant if she would get free breadsticks. The claimant did prepare breadsticks and gave them to the friend without having the friend pay for the breadsticks. The claimant was on notice of the employer's policies which prohibit giving away food and which indicate discharge can result from a single infraction. When this incident was reported to the store manager, Owen, on June 24, she was able to view on surveillance video that the claimant had given breadsticks to the friend which were not paid for. As a result, on June 25 the claimant was discharged.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's giving away food to a friend contrary to the employer's known policy shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's July 15, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of June 23, 2013. This disqualification continues until the claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/pjs