

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VANITA G JENSEN
Claimant

APPEAL NO. 09A-UI-19562-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 11/29/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 29, 2009, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on February 10, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Cord Hemelman. Sara Luebbert participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a store clerk for the employer from September 26, 2008, to December 2, 2009. She was informed and understood that under the employer's work rules, employees caught selling age-restricted products to under-aged persons were subject to immediate discharge and that anyone who appeared younger than 27 years of age was to be required to produce a valid picture identification.

On December 1, 2009, the police department conducted a sting operation in which they sent someone into the store who was under 18 years of age and not legally able to buy cigarettes. The claimant sold cigarettes in violation of the law and the employer's work rules to this minor and did not ask him for identification. She received a citation for this offense. The employer is also subject to being fined based on employees selling cigarettes to minors.

The employer discharged the claimant on December 2, 2009, for violation of its work rules by selling cigarettes to a minor without checking the person's identification.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

The claimant argued the person she sold to looked like they were older and that the store manager did not fire her immediately, but instead let her finish her shift. The preponderance of the evidence establishes a person who was 17 years or younger would not look 27 years or older. In an unemployment insurance case, the claimant's conduct is reviewed to decide if she committed work-connected misconduct. This is the case even if her manager failed to follow a work rule to discharge her immediately.

DECISION:

The unemployment insurance decision dated November 29, 2009, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css