

**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**

**Appeal Number: 05A-UI-06009-DT  
OC: 05/01/05 R: 01  
Claimant: Appellant (1)**

**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, 4<sup>th</sup> 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.

**KAREN F EBLEN  
1231 – 260<sup>TH</sup> ST  
BRIDGEWATER IA 50837**

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.

**CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORE  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Karen F. Eblen (claimant) appealed a representative's June 1, 2005 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 June 27, 2005. This appeal was consolidated for hearing with one related appeal, 05A-UI-06010-DT. The claimant participated in the hearing. Nancy Nourse appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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?

FINDINGS OF FACT:

The claimant started working for the employer on March 7, 1987. Since approximately 2003, she worked full time as a cashier/cook at the employer's Fontanelle, Iowa store. Her last day of work was May 4, 2005. The employer discharged her on that date. The stated reason for the discharge was removing product from the store without paying for it.

The employer had given all employees, including the claimant, a written reminder regarding the employer's policy against removal of product without paying for it on May 7, 2005. A revised policy had been distributed to the employees in 2004, and on April 3, 2005, the employer had the store employees, including the claimant, sign another memorandum specifically covering the employer's policy on removal of product. The policy specified that product must be paid for if an employee removed it from the premises for any reason, including but not limited to consumption. The policy also provided that discharge could occur for a first-time offense.

On May 4, 2005, the claimant was working a shift from 10:00 a.m. to approximately 4:00 p.m., of which 10:00 a.m. to 1:30 p.m. was as a cook, and the remainder as a cashier. At approximately 11:00 a.m. the claimant made a mistake on a pizza order. She made a new pizza and put the mistake pizza in a box on a shelf. She did not attempt to put slices of the mistake pizza into the warmer for individual sale as she felt the slices were too big. Shortly after 1:30 p.m., after finishing her cooking duties, she paid for a bag of "too old" doughnuts, and then took the bag and the mistake pizza box to her vehicle. She did not pay for the pizza. She then returned to the store to work as a cashier.

A customer saw the claimant take the pizza out without paying for it and reported it to the store manager, who contacted Ms. Nourse, the area supervisor. Ms. Nourse came to the store and viewed the video. She then confronted the claimant. The claimant indicated that she had paid for the doughnuts but not paid for the pizza because the doughnuts were intended for human consumption and the pizza she intended to feed to her dog. She acknowledged that she knew of a situation where another employee had taken doughnuts to be fed to some animals and had gotten suspended, so that she realized that she might get in trouble, but had thought that she would only get suspended or warned, rather than discharged.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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.

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).

Particularly given the frequency and recency of the employer's emphasis and reemphasis of the policy regarding removal of product, the claimant's removal of the pizza without paying for it 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 June 1, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 4, 2005. 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.

ld/pjs