

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN E FINTEL**  
Claimant

**APPEAL NO. 09A-UI-18593-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 10/25/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated December 3, 2009, reference 01, which denied unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 25, 2010. Claimant participated personally. The claimant was represented by Robert Wilson, Attorney at Law. The employer participated by Kathy Miller, Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: Karen Fintel was employed by Casey's Marketing Company from May 9, 2001 until October 15, 2009 when she was suspended pending her discharge on October 23, 2009. Ms. Fintel was employed as a full-time assistant manager and was paid by the hour. Her immediate supervisor was Kathy Miller. The claimant was discharged under a company policy that requires the termination of an employee who sells tobacco products to an underage buyer.

Ms. Fintel was the object of a law enforcement "sting operation" on approximately October 14, 2009. Ms. Fintel self-reported to her manager that she had been issued a citation for selling tobacco to an underage individual.

Ms. Fintel followed company procedures by checking the buyer's driver's license and determining that the license picture was the same as the individual making the tobacco purchase. The claimant, who was familiar with the procedure and who had performed it numerous times without error, inadvertently made an error in typing in the buyer's birth date. When the cash register signaled that the purchase was authorized, Ms. Fintel continued the sale. The claimant did not realize that she had made a clerical error in inputting the purchaser's birth date.

Prior to the incident in question the claimant had not received any warnings or counselings and had been considered a good company employee.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant a discharge of an employee may not be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The evidence in this case establishes that Ms. Fintel had not been previously warned or counseled by this employer and had been considered to be a good employee. The evidence in the record further establishes that the claimant had on numerous occasions correctly checked the identification of purchasers of alcohol or tobacco without error.

On the date in question the claimant inadvertently made an inputting error while typing in the purchaser's birth date resulting in the computerized cash register system signaling the claimant that the sale was authorized. The administrative law judge finds the claimant's conduct to be an isolated instance of carelessness or negligence in an otherwise unblemished employment record. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, the claimant's negligence was not of such a recurrent nature so as to manifest culpability under the provisions of the Iowa Employment Security Act. The claimant had never violated the policy before and had not been warned and did not intend to violate the policy at the time of the incident that caused her discharge. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated December 3, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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