

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEAN R WHITNEY**

Claimant

**APPEAL NO: 12A-UI-04924-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 03/25/12**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 19, 2012, reference 01, that held she was discharged for misconduct on March 29, 2012, and benefits are denied. A telephone hearing was held on May 22, 2012. The claimant participated. Jean Yamagata, Store Manager participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on December 28, 2010, and last worked as a part-time cook on March 30, 2012. The employer made an employee handbook available to claimant that contained the policies of the employer. The claimant also received the removal of company property, and employee discount/purchase policy. Employees are required to pay for any item they intend to consume. Any violation subjects an employee to discipline up to and including termination.

On March 28, the store manager went into the kitchen and it appeared claimant was hiding a sandwich. This caused the manager to review the employer records on the following day to see if there was a claimant/employee discount receipt for the sandwich. There was none. The manager reviewed a kitchen area security camera that showed claimant taking it from a microwave but there was no evidence of payment. Claimant admits making the hamburger and forgetting to pay for it.

The manager terminated claimant for consuming an employer food product without paying for it in violation of company policy. The manager routinely terminates employees for this violation.

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

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on March 30, 2012, for violation of company policy.

The claimant knew the food product consumption policy and her violation for this offense constitutes job disqualifying misconduct. While the employer might have a strict policy that it enforces with termination rather than other discipline for a first offense, it puts an employee on notice of this a potential consequence at the time of hire.

**DECISION:**

The department decision dated April 19, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on March 30, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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