

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANN M ROSENMEYER

Claimant

APPEAL NO. 09A-UI-16463-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/04/09

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge for Misconduct

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Casey's Marketing Company filed an appeal from a representative's decision dated October 21, 2009, reference 01, which held that no disqualification would be imposed regarding Ann Rosenmeyer's separation from employment. After due notice was issued, a hearing was held by telephone on December 8, 2009. The employer participated by Andrew Mason, Manager. Ms. Rosenmeyer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Rosenmeyer was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Rosenmeyer was employed by Casey's from December 13, 2005 until September 28, 2009. She was last employed full time as an assistant manager. She was discharged for falsifying time records.

The manager was conducting a payroll audit on September 28, 2009 and noted that there were a number of occasions on which Ms. Rosenmeyer's departure times had been altered. She logged onto the computer as her manager and changed her own records and those of one other employee on at least six occasions in August and September of 2009. The manager was not present on any of the occasions when the changes were made and had not given Ms. Rosenmeyer permission to change the records. Ms. Rosenmeyer added anywhere from 1 to 32 minutes to the departure times.

When the employer confronted Ms. Rosenmeyer about the alterations, she indicated she had to change her times because she wound up having to stay later after she had already clocked out. The employer reviewed the surveillance tapes and determined that she left the store prior to the times she subsequently entered into the computer. Based on the falsifications, Ms. Rosenmeyer was discharged. The above matter was the sole reason for the separation.

Ms. Rosenmeyer filed a claim for job insurance benefits effective October 4, 2009. She has received a total of \$1,746.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Rosenmeyer was discharged for falsifying time and attendance records. She manipulated the computer records to make it appear that she worked more time than she actually did. Her actions constituted time card theft, which is clearly contrary to the type of behavior an employer has the right to expect. It results in the employer paying an individual for time not actually worked.

Ms. Rosenmeyer knew or should have known that her conduct was not within the employer's expectations. For the reasons cited herein, the administrative law judge concludes that disqualifying misconduct has been established. Accordingly, benefits are denied. Ms. Rosenmeyer has received benefits since filing her claim.

Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated October 21, 2009, reference 01, is hereby reversed. Ms. Rosenmeyer was discharged by Casey's for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Rosenmeyer will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs