

**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**

**HEATHER L FONSECA
1311 W 4TH ST APT 2
WATERLOO IA 50702**

**CASEY'S GENERAL STORE INC
C/O TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-02240-DWT
OC 01/25/04 R 03
Claimant: Respondent (2)**

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, 4th 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.

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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's General Store, Inc. (employer) appealed a representative's February 19, 2004 decision (reference 01) that concluded Heather L. Fonseca (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2004. The claimant participated in the hearing. Teresa Zuke, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on December 1, 2003. The employer hired her to work as a part-time, 18 to 22 hours a week, cashier. The employer's policy informs employees that during their first 90 days of employment, the employer considers the employee to have voluntarily quit if the employee does not call or report to work two times.

The claimant agreed to work on January 5, a day she had not initially been scheduled to work. The claimant forgot about working on January 5 and did not work as scheduled. The employer talked to the claimant about this incident. While the employer agreed to overlook the fact the claimant did not work as scheduled on January 5, the employer warned the claimant that she could not do this again.

The claimant worked as scheduled on January 23, 2004. When the claimant looked at the schedule, she was not scheduled to work on January 26 or did not notice that she was scheduled to work on January 26. The claimant was not in town on January 26 and did not report to work on January 26. The claimant reported to work as scheduled on January 28, 2004. The employer discharged the claimant for again failing to work as scheduled.

The claimant established a claim for unemployment insurance benefits during the week of January 25, 2004. She filed claims for the weeks ending January 31 through March 20, 2004. She received her maximum weekly benefit amount of \$151.00 for each week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known the employer would not tolerate her failure to call or report to work as scheduled. The employer gave the claimant an opportunity to continue her job after she forgot about agreeing to work on January 5, 2004. Since the claimant worked on January 23, she had an obligation to check the schedule to make sure she knew when she was next scheduled to work. Although the claimant testified the schedule had been changed from the first time she looked at it, she told the employer she forgot about being scheduled on January 26 when she reported to work on January 28. The claimant's failure to know when she was scheduled to work or to forget when she was scheduled to work amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected

misconduct. As of January 25, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 31 through March 20, 2004. The claimant has been overpaid a total of \$1,208.00 in benefits she received for these weeks.

DECISION:

The representative's February 19, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 25, 2004. This disqualification continues until she 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. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 31 through March 20, 2004. The claimant has been overpaid \$1,208.00 in benefits.

dlw/b