

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

AMBER L PETERSON
4135 E 7TH ST
DES MOINES IA 50313

CASEY GENERAL STORE
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-06346-HT
OC: 05/02/04 R: 02
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 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Casey's General Store (Casey's), filed an appeal from a decision dated May 26, 2004, reference 01. The decision allowed benefits to the claimant, Amber Peterson. After due notice was issued a hearing was held by telephone conference call on July 6, 2004. The claimant participated on her own behalf. The employer participated by Manager Anna Killan.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Amber Peterson was employed by Casey's from July 2003 until April 27, 2004. She was a full-time cashier/pizza maker.

The claimant closed the store at 11:00 p.m. on Saturday, April 24, 2004. She left the keys in the door of the store. The key ring contained the store key and two keys to her house. When she arrived at her home in Des Moines, she discovered the keys were missing and drove back to the store. By that time a deputy sheriff had discovered the keys in the door and removed them. An attempt was made to contact Manager Anna Killan but she was out of town, so the keys were taken to the sheriff's office. The next morning a message was left with a store employee and that message was given to Ms. Killan when she returned to work on Monday, April 26, 2004.

The claimant had discovered her keys were not in the door of the store when she returned around 12:30 a.m. She assumed Ms. Killan had the keys but did not call and check. She did not search her car to see if the keys had been mislaid there, nor did she call the police or other law enforcement agency to apprise them that the store might be vulnerable. Instead she returned home and then went out of town to visit family on Sunday without attempting to notify anyone at the store of the potential problem.

When Ms. Killan was informed of the situation, she collected the keys from the sheriff's office then talked to her supervisors and district managers about the appropriate course of action. She also notified the claimant that a decision was pending on disciplinary action against her, and that it might include discharge. On April 27, 2004, the corporate office notified Ms. Killan to discharge the claimant and she did so by telephone.

Amber Peterson has received unemployment benefits since filing a claim with an effective date of May 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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).

The administrative law judge accepts that the claimant unintentionally left the keys to the store in the door. This was not willful and deliberate misconduct. However, the claimant's misconduct occurred when, upon returning to the store, she discovered the keys were not in the door. At that time, she merely turned around and went back home without notifying the manager, the police or anyone else that the store was vulnerable. This jeopardized not only the property of the employer but the safety of other employees. This is conduct not in the best interests of the employer and the claimant is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of May 26, 2004, reference 01, is reversed. Amber Peterson is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$1,113.00.

bgh/kjf