

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

RITA A RAINS  
5805 N HOWELL ST  
DAVENPORT IA 52806

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

Appeal Number: 04A-UI-12825-JTT  
OC: 06/20/04 R: 04  
Claimant: Appellant (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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-1 – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant, Rita Rains, filed a timely appeal from the November 24, 2004, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 22, 2004. Claimant did participate. The employer did not participate. At the time of the hearing, the administrative law judge telephoned the phone number the employer's representative had provided. The Casey's employee who answered the telephone advised the administrative law judge that Katrina Hernandez, the store manager, had quit her employment the previous day. Exhibits One, Two and Three were received into evidence.

#### FINDINGS OF FACT:

Having reviewed all of the evidence in the record and having reviewed the record of the fact-finding investigation, the administrative law judge finds: Ms. Rains was employed by Casey's as a part-time donut-maker through November 3, 2004, when she was discharged by Store Manager Katrina Hernandez for violation of a company policy regarding cash handling procedures. See Exhibit One.

The last incident that prompted Ms. Hernandez to discharge Ms. Rains was a cash register shortage on October 31. At the fact-finding interview and in the Employee Separation Form, the employer made no assertion that the cash register shortage resulted from any intentional wrongdoing by Ms. Rains. See Exhibit One. Ms. Rains' primary duties were making donuts and making lunch items. Though Ms. Rains was trained in use of the cash register, she was only called upon to operate the register when the convenience store was short of staff or busy. Ms. Rains had previously had a cash register shortage on September 30, for which she was counseled by Ms. Hernandez. See Exhibit Two. The employer's decision to discharge Ms. Rains was based on a policy of progressive discipline contained in the employee handbook, which Ms. Rains acknowledged receiving on September 3, 2004. See Exhibit Three. At the fact-finding interview, the employer asserted that Ms. Rains' progressive discipline had been based exclusively on violations of the company's cash handling procedures, i.e. cash register variances.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment 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.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

Casey's only reason for discharging Ms. Rains was an unintentional error Ms. Rains made on those rare instances when she was pulled from her primary duties to run a cash register. Such error does not constitute misconduct. See 871 IAC 24.32-1-a. No disqualification may enter.

#### DECISION:

The November 24, 2004, reference 02, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

jt/pjs