

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PENNY S SAVAGE

Claimant

APPEAL NO. 11A-UI-05149-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES

Employer

OC: 03-13-11

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 13, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 12, 2011. The claimant did participate. The employer did participate through Sherry Thomatos, manager. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cashier/cook, full-time, beginning June 17, 2010, through March 14, 2011, when she was discharged. On March 12 a customer came into the store and asked the claimant if there was any more pizza. The warmer was empty and the customer wanted to purchase pizza. The claimant told the customer that he would have to wait, as she was busy cleaning the dough roller. The customer returned on March 14 and complained to the manager that the claimant had treated him rudely. Ms. Thomatos investigated by speaking to the other two employees who were working with the claimant at the time. She spoke to each of them separately. Both employees, Jaime and Pepper, confirmed the customer's version of events.

Ms. Thomatos had spoken to the claimant on two separate prior occasions about how she was treating customers. The first instance occurred when a customer wrote a letter of complaint about her and the second occurred when the claimant was overheard talking about her tattoos. The claimant knew that treating the customer's rudely could lead to her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant denies that any conversation about pizza ever took place on March 12 while she was working. The administrative law judge is persuaded that the customer complaint, confirmed by two other employees who were present, establishes that the claimant did treat a customer rudely who asked for pizza. The claimant had been warned about similar conduct before the final incident and knew, or should have known, that treating the customers rudely was conduct not in the employer's best interest. The employer's evidence does establish misconduct sufficient to disqualify the claimant from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The April 13, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw