

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROSEMARY A LEE**  
Claimant

**APPEAL NO. 14A-UI-08057-H2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 07/06/14**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 28, 2014 (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, an in-person hearing was held on September 23, 2014. The claimant did participate and was represented by Michael Lewis, Attorney at Law. The employer did participate through Ron Niemeyer, Area Supervisor; Leann Purdy, General Manager; Stacy Jones, Second Assistant Manager; and was represented by David Williams of Talx UC Express. Employer's Exhibit One was entered and received into the record. Claimant's Exhibits A through N were entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as an associate beginning on September 29, 1992 through June 10, 2014 when she was discharged.

When Leann Purdy began as general manager in November 2012 she noted that a large group of men would come in each morning, pick up their coffee, not pay for their coffee, and call out to the claimant, who was acting as cashier, "coffee club." She asked what that meant and was told that this group of men would pay for their coffee once per week. After checking with her supervisor Ms. Purdy made it clear to the claimant that all customers were required to pay for their purchases at the time of purchase and not at any later date. Ms. Purdy also noted that on occasion the claimant would give her family and friends a discount on their coffee or beverage purchases. Ms. Purdy had repeated conversations with the claimant telling her that such behavior was unacceptable and that she was not to give discounts to her family members and friends. Ms. Purdy continued to note that when she was present the claimant would correctly ring up beverage purchases for her family and friends. However, when Ms. Purdy was not present, the claimant would give discounts, albeit small ones, to her family members and friends. The claimant demonstrated an ability to properly perform her job duties.

On April 25, 2014 the claimant was given a one-day suspension for failing to properly ring up coffee purchases for her friends. The claimant was specifically told that any additional violations of the rules could lead to her discharge.

On May 27 Ms. Purdy was out of town when another cashier, Stacy Jones, noted that the claimant's rang up coffee purchases for her son-in-law and grandson with discounts they were not entitled to receive, as they took new cups and were not purchasing refills. Ms. Jones reported what she had seen to Ms. Purdy who was out of the state. When Ms. Purdy returned she reviewed surveillance video that confirmed the claimant had given an unauthorized discount to her son-in-law and grandson. Surveillance videos were reviewed at the hearing, making it clear that the claimant did give her son-in-law and grandson discounts that they were not entitled to on May 27. The claimant admitted at hearing that she had given discounts to family and friends, but could not offer any credible explanation as to why she had done so. The claimant's repeatedly giving discounts to customers, who were not entitled to the discount, amounts to theft from the employer.

### **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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant had been repeatedly warned that she was not to give discounts to her friends and family. When Ms. Purdy was present the claimant properly charged customers, including her family and friends, indicating that she knew how to properly perform her job duties. The claimant acted intentionally when she gave discounts to family and friends who were not entitled to receive them. Claimant's repeated failure to accurately ring up purchases, after having been warned, is evidence of disqualifying job-related misconduct sufficient to disqualify her from receipt of benefits. Benefits are denied.

**DECISION:**

The July 28, 2014 (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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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