

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SUSAN L AESCHLIMAN**  
Claimant

**CASEYS MARKETING COMPANY**  
Employer

**APPEAL 18A-UI-11196-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 12/03/17**  
**Claimant: Respondent (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 5, 2018 (reference 03) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer failed to establish the discharge was for willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held on December 3, 2018. The claimant, Susan L. Aeschliman, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Casey's Marketing Company, participated through Anita Crum, Store Manager; and Zontel McCann, UIC with Talx/Equifax. Employer's Exhibits 1 through 3 was received and admitted into the record. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time, most recently as a store employee, from July 16, 2018, until August 22, 2018, when she was discharged. Claimant last reported to work on August 20, 2018. Claimant was scheduled to work from 6:00 a.m. until 2:00 p.m. She was still there at 3:30 p.m., trying to finish her work. This was a chronic issue for claimant; she frequently had to stay at least one hour after the scheduled end of her shift to finish her work. Amy, the kitchen manager, asked claimant to meet with her in the office once her work was completed to discuss what more the employer could do to help claimant succeed. Claimant became upset by this. She began yelling and screaming and flailing her arms. Amy then asked claimant to come into the office immediately as she was making a scene and numerous customers were present. Once in the office, claimant slammed herself down in the chair and refused to make eye

contact. When Amy talked, claimant crossed her arms and acted like she was not listening. She also refused to cooperate with management. Therefore, Amy told claimant to clock out and go home.

Claimant was next scheduled to work on August 22. When claimant came in, she appeared pleasant and ready to work. However, as soon as Crum told her that they needed to meet to discuss what happened two days prior, claimant again got an attitude. She started yelling and screaming that no one liked her. Crum tried to tell claimant that the employer was just trying to counsel her to help her succeed at work, but claimant would not listen. Again, claimant crossed her arms and refused to make eye contact with Crum when Crum was speaking. Crum initially intended to give claimant a written warning for her actions on August 20. However, claimant's continued poor attitude and refusal to listen to and engage with management led Crum to discharge claimant. Crum had reviewed the code of conduct with claimant thoroughly when claimant was hired, and claimant knew that her actions on August 20 and 22 were not acceptable workplace behavior.

The administrative record reflects that claimant has received no unemployment benefits since filing a claim with an effective date of December 3, 2017, and an additional date of October 7, 2018. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal. McCann personally participated in the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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 Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, claimant yelled and screamed at management and refused to listen when management was attempting to coach her. Claimant was then sent home. On August 22, Crum intended to simply coach claimant on this behavior, but claimant resumed yelling, screaming, and refusing to listen. Claimant's actions violate the reasonable standards of behavior that any employer is entitled to expect of employees. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld. As claimant has not received any benefits since separating from this employer, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The November 5, 2018 (reference 03) unemployment insurance decision is reversed. 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. The issues of overpayment, repayment, and chargeability are moot.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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