

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONA P RENTERIA
Claimant

APPEAL NO. 11A-UI-08990-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 06-05-11
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 1, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 2, 2011. The claimant did participate. The employer did participate through Bo Knop, Area Supervisor.

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 an assistant manager full time beginning in October, 2004 through June 8, 2011 when she was discharged. On May 13, 2011 the claimant was placed on an improvement plan that included requiring her to handle employee situations more professionally, promote a positive work environment, work her scheduled hours and avoid creating dissension and gossip in the store. The claimant had been placed on a similar performance plan when she was assigned to work at another store. She was warned at the time she was placed on the performance improvement plan that her failure to meet the employer's expectations could lead to her discharge. The claimant was the manager on call on June 5. When the donut maker did not show up for her scheduled shift the store employees attempted to notify the claimant but she failed to answer her cell phone. The claimant later reported that she had lost her cell phone but never notified anyone at the store of that fact. The claimant knew that she was to be available to handle situations exactly like what occurred but did not do so. Additionally, the claimant had failed to properly report her absence due to illness on May 29. The claimant as the assistant manager was well aware of the proper reporting procedures but simply failed to follow them herself. The claimant had continued to borrow money and cigarettes from other coworkers despite begin specifically instructed not to do so. She also continued to text employees to see if they could come into work instead of calling them and talking to them as she had been instructed to do. In the past the claimant had demonstrated an ability to meet the employer's expectations.

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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to accurately perform her job duties after having established the ability to do so and after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The July 1, 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/css