

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN COFFMAN**

Claimant

**APPEAL NO. 08A-UI-08873-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 08/31/08 R: 04  
Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated September 23, 2008, reference 01, which held that Dawn Coffman (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 20, 2008. The claimant participated in the hearing. The employer participated through Karen Fillinger, Area Supervisor. Employer's Exhibits One and Two and Claimant's Exhibits A, B and C were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time manager from July 23, 2004 through September 2, 2008 when she was discharged for a repeated lack of professionalism. She introduced into evidence performance appraisals for 2005, 2006 and 2007 and it appears the problems with her lack of professionalism were first noted on August 9, 2007. The evaluation reported the claimant failed to meet expectations in five specific job duties, and consequently, she did not receive her 2007 pay raise. There were problems with the cleanliness of her store and failure to follow company policy guidelines on interviewing, hiring, performance evaluations, disciplinary action and dismissal. The claimant also failed to meet expectations in professionalism, resolving employee conflicts/issues and following/enforcing company policies and guidelines.

Subsequent to the last performance evaluation, the employer issued several disciplinary warnings. The employer received an email complaint about the claimant on January 24, 2008 and issued the claimant a verbal warning. The email complained that the claimant was rude to customers and employees alike. A written warning was issued to her on April 22, 2008 after the

employer found a nasty note the claimant had left for her employees to read. The employer commented that it was not the first time a note like that had been found. The claimant was advised to act professionally and to communicate with her employees in a professional way. A second written warning was issued to the claimant on August 20, 2008 in response to another email complaint that the claimant is rude to both employees and employers. The warning advised her that no more rude or unprofessional behavior would be tolerated. A final email complaint was received on August 28, 2008 about the claimant's lack of professionalism and lack of customer service. At approximately the same time, the employer received several complaints from employees who were upset about not getting guidance from the claimant and who were threatened with dismissal for various reasons. The claimant was discharged on September 2, 2008.

The claimant filed a claim for unemployment insurance benefits effective August 31, 2008 and has received benefits after the separation from employment.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for a repeated lack of professionalism. She denies she was unprofessional but some of the evidence she introduced confirms she had problems in this area as far back as September 2007. The claimant's repeated lack of professionalism shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

#### **DECISION:**

The unemployment insurance decision dated September 23, 2008, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css