

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KYLE L HOLTZINGER**

Claimant

**APPEAL NO. 13A-UI-04192-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 03/10/13**

**Claimant: Respondent (2/R)**

Section 96.5-2-a – Discharge

Section 96.3-7 – Benefit Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company filed a timely appeal from a representative's decision dated March 27, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 14, 2013. The claimant participated. The employer participated by Ms. Brenda Robertson, Store Manager. Employer's Exhibits One, Two, Three and Four were received into evidence.

**ISSUE:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Kyle Holtzinger was employed by Casey's Marketing Company from July 11, 2011 until November 2, 2012 when he was discharged for violation of company policy. Mr. Holtzinger was employed as a part-time cashier, working 20 to 35 hours per week and was paid by the hour. His immediate supervisor was Brenda Robertson, store manager.

Mr. Holtzinger was discharged on November 2, 2012 after review of a company security tape showed Mr. Holtzinger selling alcoholic beverages to an individual without checking the individual's age. Ms. Robertson, who reviewed the tape, personally recognized the buyer as being an individual who was 18 years old or younger. The individual on the tape had previously made application for employment and therefore was familiar to Ms. Robertson.

Company policy requires clerks to personally check the age identification of any purchasers of restricted products, such as alcoholic beverages, if they appear to be 27 years of age or younger. Employees are required to check a valid picture id of individuals 27 years or younger every time they wish to purchase alcohol. The company provides a register scanner to scan driver licenses if available and provides a computer screen for the clerk to enter the birthdate of

the purchaser. Clerks are instructed “do not make the sale” if the purchaser does not have identification or acceptable identification.

Mr. Holtzinger was aware of the policy and had signed the acknowledgement of the receipt of the restricted products policy. Prior to the incident in question coming to the attention of the employer, Ms. Robertson had personally warned Mr. Holtzinger to check identifications and not to sell alcoholic products to anyone who is under age. Ms. Robertson had reminded the claimant that violation of the policy would mean termination from employment.

Mr. Holtzinger did not check the identification of the under aged individual in question because he was busy at the time and did not take the time away from other customers to follow the age restricted products policy.

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

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter, the evidence establishes that Mr. Holtzinger was aware of the company policy that required the clerks to check the identification of all purchasers of alcohol products who appeared to be under the age of 27. Claimant had acknowledged receipt of the policy and the policy contains a number of specific directives to clerks that must be followed. Employees are made aware that failure to follow the company's selling age restricted products policy will result in termination from employment. The evidence also establishes that prior to the incident in question the store manager had personally warned Mr. Holtzinger that he must check the id of purchasers and not sell to under age buyers or face termination from employment. When the claimant was clearly observed on company security tapes violating the policy by selling beer to an individual who is 18 years of age or younger, the claimant was discharged from employment.

Because the evidence in the record establishes that the company rule was in place, the claimant was aware of it and had been warned but yet failed to follow it, the administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated March 27, 2013, reference 01, is reversed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Claims division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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