

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDI T DIXON

Claimant

APPEAL NO. 09A-UI-17243-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/04/09

Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated November 3, 2009, reference 01, that held she was discharged for misconduct on October 4, 2009, and benefits are denied. A telephone hearing was held on December 15, 2009. The claimant participated. Roxanne Helgeson, Manager, participated for the employer. Employer Exhibits One through Three was received as evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began full-time employment on May 29, 2007, and last worked for the employer as a full-time assistant manager on October 4, 2009. The claimant received and signed the employer age restricted products policy on April 14, 2009. The policy prohibits an employee from selling tobacco to any person under the age of 18, and it describes the procedure for checking the age before refusing a sale. The disciplinary policy provides that employees caught selling age restricted products to under-age persons are subject to immediate dismissal.

The Winneshiek County, Iowa sheriff's office conducted a sting operation by sending a 16-year-old female into the employer's store to purchase tobacco. The legal age to purchase tobacco is 18. The claimant waited on the female customer and allowed her to purchase tobacco. The claimant failed to note the birth-date on the identification (ID) that showed the female was not 18, failed to enter the birth-date into the register, and failed to scan the ID, which is required by the employer age restricted policy.

The claimant was issued a citation for selling tobacco to a minor, pled guilty and paid a fine of \$195.00. The employer was also cited for the incident and paid a fine.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the employer established misconduct in the discharge of the claimant on October 4, 2009, for violating the age restricted products policy by selling tobacco to a person under the age of 18.

While the claimant attributes the incident to human err, she violated the employer policy in several respects that would have put her on notice the female customer was not old enough to purchase tobacco. Since she knew the policy and that a violation meant termination from employment, job disqualifying misconduct is established in this matter.

DECISION:

The decision of the representative dated November 3, 2009, reference 01, is affirmed. The claimant was discharged for misconduct in connection with employment on October 4, 2009. Benefits are denied, until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css