

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARCIA J MUMM**

Claimant

**APPEAL NO. 09A-UI-18409-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 10/18/09**

**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Casey's Marketing Company filed a timely appeal from a representative's decision dated November 30, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits based upon her separation from Casey's Marketing Company. After due notice, a telephone conference hearing was scheduled for and held on January 19, 2010. The claimant participated personally. The employer participated by Ms. Kristie McDonald, Store Manager.

**ISSUE:**

The 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: Marcia Mumm was employed as a part-time clerk for Casey's Marketing Company from March 20, 2009 until April 21, 2009 and was discharged for falsification of her application for employment.

At the time that Ms. Mumm made application for employment she completed an application form that requested the claimant to provide information on her criminal history. Ms. Mumm was asked on the questionnaire if she had ever been convicted of a crime, and if so, to provide details. Ms. Mumm indicated on the application that she had been previously convicted of a felony drug charge but added that her civil rights had been restored.

A subsequent background check showed that in addition to the conviction listed by Ms. Mumm, the claimant had also been convicted of theft on November 26, 1996; August 31, 2000; and December 5, 2003. Because the employer considered the claimant's failure to list significant convictions in her criminal history, the employer concluded that the claimant had engaged in falsification of her application from employment and Ms. Mumm was discharged. The application for employment informs applicants that failure to correctly disclose prior convictions

can result in termination from employment. It is the claimant's position that she did not "remember" the theft convictions.

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

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

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.

Here, the evidence in the record establishes that Ms. Mumm did not completely disclose criminal convictions on her application for employment with Casey's Marketing Company. The application required that potential employees list prior convictions and explain the circumstances. The listing of the convictions would not in and of itself preclude the applicant from being employed. The employer, however, desired to be informed of prior convictions so that the company could make an informed decision as to whether an applicant would be hired or not.

The claimant's failure to list three significant convictions for theft in her criminal history precluded the employer from pertinent information in Ms. Mumm's history that may have been a deciding factor on whether the claimant was hired for a position of clerk/cashier. The administrative law judge finds the claimant's testimony that she "forgot" the convictions to strain credibility.

Based upon the above-stated facts and the application of the law, the administrative law judge concludes that the claimant's failure to include prior significant convictions with reasonable accuracy demonstrated a disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of employees under the provisions of the Employment Security Act. Benefits are denied.

Ms. Mumm filed a claim for unemployment insurance benefits with an effective date of October 18, 2009 and has received unemployment insurance benefits since opening her claim.

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 November 30, 2009, reference 01, is reversed. Marcia Mumm is disqualified. Unemployment insurance benefits are withheld until the claimant has

worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided that she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs