

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY SKILES**

Claimant

**APPEAL NO. 09A-UI-11137-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**Original Claim: 06/28/09**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated July 24, 2009, reference 01, that held the claimant was discharged for misconduct on June 5, 2009, and that denied benefits. A telephone hearing was held on August 18, 2009. The claimant participated. Karen Colvin, Area Supervisor, participated for the employer. Employer Exhibits One through Three were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began full-time employment as cashier/pizza clerk on March 1, 2000, and last worked for the employer on June 1, 2009. The claimant received the drug/alcohol policy of the employer. Paragraph two of the policy provides that an employee shall not report to work under the influence of illegal drugs or alcohol.

When the claimant failed to report to work at 6 a.m. on Monday, June 1, the store manager went to her residence to check on her. The claimant advised the manager she would come to work, and did report about 7 a.m. Supervisor Colvin was in her office when about 7:30 a.m. and she heard the claimant using profanity and got up to see what was going on. Colvin saw a customer in the store and requested the claimant go into her office due to the claimant's conduct. Colvin could smell an odor of alcohol on the claimant's breath; and when confronted on this issue, the claimant admitted she had been drinking until about 5 a.m. Colvin noted the claimant slurred her speech, and was unsteady on her feet, and she continued using profanity in the office setting.

Colvin sent the claimant home; and when she returned at about 10:30 a.m., Colvin formally discharged her for violation of the drug/alcohol policy of the employer. Colvin also considered

the claimant's failure to report for work that day on time in light of prior warnings for other attendance issues.

**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 the employer has established that the claimant was discharged for misconduct in connection with employment on June 1, 2009 due to a violation of employer drug/alcohol policy.

While claimant's store manager may have been forward in going to her residence to request her to come to work, the claimant had placed herself in a difficult position by being unfit to go to work due to drinking until 5 a.m. with a 6 a.m. start time for work. The claimant was faced with being a no-call/no-show to work in light of prior discipline for attendance issues or reporting to work under the influence and chose the latter course of action, which is job disqualifying misconduct.

**DECISION:**

The department decision dated July 24, 2009, reference 01, is affirmed. The claimant was discharged for misconduct on June 1, 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.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw