

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SAMANTHA S CLARK

Claimant

APPEAL 16A-UI-06741-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 05/22/16

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 7, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on July 22, 2016. The claimant, Samantha S. Clark, participated, and witness Melissa Carnes testified on claimant's behalf. The employer, Casey's Marketing Company, participated through Stacie Hansen, area supervisor, and Jennifer Rice of Equifax/Talx represented the employer. Claimant's Exhibits A and B and Employer's Exhibits 1 through 9 were received and admitted into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a store manager from April 24, 2015, until this employment ended on May 25, 2016, when she was discharged for theft.

Claimant was operating the register on May 6, 2016. That day, claimant performed back-to-back post-void transactions without having a customer present. (Exhibit 2) Hansen testified that post-voids are proper when a customer is returning merchandise, and claimant did not receive any merchandise from a customer or hand any money back to a customer. Claimant testified that she post-voided these two transactions because the customers did not have sufficient money to pay for their items. According to the claimant, she would have taken a partial payment and placed it in the drawer. Claimant then allowed the customers to take the items and then come back later and pay for the merchandise they took. When the administrative law judge asked claimant's witness, Carnes, whether she ever allowed a customer to leave with merchandise and then come back and pay later, Carnes said no because, "That's theft."

The video submitted as Exhibit 2 by the employer shows claimant post-voiding the two transactions. The two transactions amounted to \$100.60. Claimant then opens the cash register drawer and the safe door, and she moves money between the drawer, the safe, and her uniform pocket. Claimant and Carnes both testified that they routinely carried their own personal money in the pockets of their uniforms, in case they needed to break down a large bill for a customer.

Hansen discovered the two post-voids and the video of claimant when she was conducting a routine audit at the store on May 24, 2016. That day, she called claimant into the office and reviewed the video with her. Claimant had no explanation for what was happening in the video. Hansen then spoke with the district manager, and he recommended she have another area supervisor come and review the video and evidence with her. Claimant denies she viewed the video with Hansen, and she contends Hansen showed her video of a separate transaction. Claimant testified she was weaning herself off of several medications in early May, and as a result she was experiencing confusion.

Around 5:00 a.m. the next morning, claimant called Hansen and left her a voicemail message saying that she had located the missing money in the safe at work. Carnes testified that she actually discovered an envelope containing \$100.60 after claimant contacted her and asked her to look for it in the safe. Hansen testified that it would be unlikely for this money to have been in the safe for two and one-half weeks without someone noticing it. Later that morning, Hansen and another area supervisor reviewed the evidence together, and the area supervisor agreed with Hansen's observations. Hansen then spoke with the district manager, who advised her to discharge claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

This case rests heavily on the credibility of the parties. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds Hansen's testimony more credible than claimant's. The administrative law judge found Carnes largely credible. The administrative law judge does not believe claimant's contention that she was authorized to let customers take merchandise from the store without paying for it. More importantly, the administrative law judge does not believe any of the customers whose transactions were post-voided on June 6 were not actually able to pay for their items.

The evidence in this case supports a conclusion that claimant chose to post-void the transactions in order to take money from the employer and act in deliberate disregard of her employer's best interest and her own responsibilities as the store manager. It is beyond belief that claimant was questioned about missing money and improperly post-voided transactions and the money mysteriously appeared in the safe the following day, particularly as Carnes only discovered it upon instruction from the claimant. Misconduct as serious as theft needs no prior warning. The employer has established that claimant was discharged due to disqualifying job-related misconduct. Benefits are withheld.

DECISION:

The June 7, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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