

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA HOWELL**  
Claimant

**APPEAL NO: 12A-UI-13952-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORES**  
Employer

**OC: 10/14/12**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated November 15, 2012, reference 01, which held that Rebecca Howell (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 19, 2012. The claimant participated in the hearing. The employer participated through Manager Rosemary Gordon. Employer's Exhibits One through Four were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time cashier from May 9, 2010 through October 14, 2012. The corporate office directed the manager to discharge the claimant as a result of multiple customer complaints. The most recent incident occurred on October 5, 2012 when the claimant publicly humiliated a customer for writing a bad check. The customer had written a bad check before so he was only allowed to write a check for gas but not any other items. The claimant took his check for gas and other items and the customer walked outside. The claimant then vocalized that the check "wasn't any good" and the customer needed to come back. She sent an adolescent customer who was standing by the door to go get the customer. When the customer returned inside the store, the claimant told him he had written a bad check and she had created this scene in front of numerous customers.

The manager was gone that day but she received three phone calls from customers complaining about the claimant's poor handling of the matter. The customer who had written

the bad check did not call the manager but wrote an email to the corporate office complaining about the claimant. Several other customers also complained to the corporate office about it. The manager's supervisor went to the store to review the surveillance recording and the customers were also questioned. The surveillance recording confirmed the facts as reported by the customers.

The claimant had just received a written warning on August 21, 2012 that resulted from customer complaints. Upper management became aware of a situation on July 26, 2012 in which the claimant and a co-worker were sitting in the manager's office while there was a line of five customers waiting at the registers. The kitchen person went to tell them there was a line of customers waiting and the co-worker went to the registers but the claimant continued sitting at the manager's desk looking at employee pay stubs and other confidential information.

The claimant filed a claim for unemployment insurance benefits effective November 15, 2012 and has received benefits after the separation from employment.

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

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on October 14, 2012 after she publicly humiliated a customer for writing a bad check. The manager and the corporate office received complaints which were supported by the surveillance recording and the claimant had been previously warned as a result of customer complaints. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated November 15, 2012, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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