

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAYLA R MILLER**  
Claimant

**APPEAL NO: 14A-UI-04317-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 03/23/14**

**Claimant: Respondent (4)**

Section 96.5-2-a – Discharge/Misconduct/Requalification

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's April 17, 2014 decision (reference 02) that concluded Kayla R. Miller was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on May 16, 2014. The claimant received the hearing notice and responded by calling the Appeals Section on May 8, 2014. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. Stephanie Swan-Johansen appeared on the employer's behalf. One other witness, Julie Sullivan, was available on behalf of the employer but did not testify. The administrative law judge takes official notice of the Agency's wage and claim data regarding the claimant. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant disqualified from receiving unemployment insurance benefits due to the August 26, 2013 separation from employment with the employer?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 3, 2013. She worked part time (about 24 hours per week) as a clerk at the employer's Humboldt, Iowa store. Her last day of work was August 26, 2013. The employer discharged her on that date. The stated reason for the discharge was taking money from a drawer and failing to pay for food.

On August 21 the claimant's drawer had a shortage of \$76.00. Upon review of the video surveillance, the employer observed that at one point during the shift the claimant was in the back room counting out her drawer, but with her back to the camera and with the lights off. Both

during that time and also during a later point during the shift when the claimant was at the counter the employer observed the claimant removing things from the drawer and putting them into her pockets.

As the employer viewed video surveillance from other days to determine if there were other incidents, it found that on August 21 the claimant had taken and eaten a piece of pizza without paying for the food as required.

The employer then discharged the claimant on August 26 for theft.

The claimant established an unemployment insurance benefit year effective March 23, 2014. Her weekly benefit amount was calculated to be \$121.00. Agency records show that in the first quarter 2014 the claimant earned over \$1,210.00 in other employment which ended on or about March 11, 2014. However, the Agency records also indicate that as of the date of this decision, that March 2014 separation from the subsequent employment has been found to be disqualifying.

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

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's theft of money and food 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. The employer discharged the claimant for reasons amounting to work-connected misconduct. As of August 26, 2013 benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is then otherwise eligible.

However, the administrative law judge further concludes from the available information that the claimant has requalified for benefits since the separation from this employer and before she sought unemployment insurance benefits effective March 23, 2014. Accordingly, benefits are allowed if the claimant is otherwise eligible and the account of the employer shall not be charged. The claimant is currently not otherwise eligible.

**DECISION:**

The representative's April 17, 2014 decision (reference 02) is modified in favor of the employer. The employer discharged the claimant for disqualifying reasons. However, the claimant has requalified for benefits since the separation. As of March 23, 2014 benefits would be allowed, if the claimant was otherwise eligible, which she currently is not. The account of the employer shall not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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