

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIM R PEIFER**  
Claimant

**APPEAL NO. 10A-UI-03165-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**Original Claim: 01/31/10  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated February 16, 2010, reference 01, that held the claimant was not discharged for misconduct on January 25, 2010, and that allowed benefits. A telephone hearing was held on April 12, 2010. The claimant participated. Sherry Decker, Area Supervisor, participated for the employer.

**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 work on January 31, 2006, and last worked for the employer as a full-time food service/cashier person on January 25, 2010. On January 20, Area Supervisor Decker started watching January store surveillance video to investigate a cigarette shortage. Decker observed the claimant consuming drink and beverage on January 1 and 9, which caused her to question whether it had been paid for according to the employer removal of company and employee discount policy. After reviewing cash register receipts/daily reports, Decker concluded the claimant didn't pay for the food and drink.

On January 25, Decker had claimant view the store video and questioned her about whether she had purchased the food or drink. Decker issued a written discharge statement that claimant violated the employer policy by failing to pay for store food and drink.

## 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for any current act of misconduct in connection with employment effective January 25, 2010.

The claimant was discharged for conduct unrelated to supervisor Decker's investigative purpose. The employer discharged the claimant for policy violations that are remote in time and place as to the date of discharge. The claimant denies any policy violation. The employer did not have the claimant sign a written statement admitting she failed to pay for food and drink or produce written evidence to show that she did. The claimant would not be expected to keep a receipt to prove payment for a store item for two or three weeks (January 1 and 9) that would be a defense to her termination.

**DECISION:**

The department decision dated February 16, 2010, reference 01, is affirmed. The claimant was not discharged for any current act of misconduct on January 25, 2010. Benefits are allowed, 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