

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOAN K CARPENTER**  
Claimant

**CASEY'S MARKETING COMPANY**  
Employer

**APPEAL 19A-UI-04996-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/19/19**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's June 13, 2019, decision (reference 01) that concluded Joan Carpenter (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 17, 2019. The claimant participated personally. The employer participated by Cheryl McMahon, Manager. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 hired on October 24, 2017, as a full-time cashier. She signed for receipt of the employer's handbook on October 24, 2017. On March 29, 2019, the employer issued the claimant a written warning for gossiping. Three employees were engaged in the activity but the employer only gave a warning to the claimant. The warning indicated that further infractions could result in the claimant's termination from employment.

A male customer worked at Hardees. He told his boss that his female co-worker at Hardees was formerly employed at Casey's and was terminated for credit card fraud/theft. When the male customer was questioned, he said the claimant told him the information on May 19, 2019, after 8:00 p.m. The female Hardees worker discovered the male customer's allegation. On or about May 20, 2019, she complained about the claimant to the employer's local store and sent an e-mail complaint to the employer's corporate office.

The employer conducted an investigation and did not find a video of the male customer talking to the claimant on May 19, 2019, after 8:00 p.m. The claimant denied the allegations asserted by the female Hardees employee. On May 20, 2019, the manager told the claimant not to worry

about it. After May 20, 2019, the female Hardees employee complained a second time to the employer's corporate office. On May 23, 2019, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of May 19, 2019. The employer provided the name and number of Stefanie Hernandez as the person who would participate in the fact-finding interview on June 12, 2019. The fact finder called Ms. Hernandez but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's June 13, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs