

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAWN M WHITE**

Claimant

**APPEAL NO. 12A-UI-12868-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 09/23/12**

**Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated October 16, 2012, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 19, 2012. The claimant did not respond to the hearing notice and did not participate. The employer participated by Todd Garrett, area supervisor. The record consists of the testimony of Todd Garrett and Employer's Exhibits 1 through 10.

**ISSUES:**

Whether the claimant was discharged for misconduct; and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns and operates a chain of convenience stores. The claimant was the full-time manager of the one of the stores located in Waukee, Iowa. The claimant was originally hired in 2007. Her last day of work was September 24, 2012. She was terminated on September 24, 2012.

The incident that led to the claimant's termination occurred on September 22, 2012. The claimant pumped fuel into her personal vehicle. She told one of the other employees to write it off as a "drive off" and that she would pay for the fuel later. Todd Garrett was told about this incident by an employee on September 24, 2012. He did some further investigating and found that the claimant had done the same thing on August 8, 2012. The claimant never paid for the fuel she pumped on that day, either.

The employer has a written policy, of which the claimant was aware, that any merchandise used by an employee must be paid for prior to taking it. Failure to do so is considered theft.

### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed by an employee is honesty. An employer can reasonably expect that its property will not be misappropriated by an employee. The employer has the burden of proof to show misconduct.

The claimant is not eligible for unemployment insurance benefits. The evidence showed that she pumped gas into her personal vehicle and told employees that she supervised to treat it as a "drive off." Although she said she would pay for the gas later, she never did. The claimant was aware of the employer's rules that no merchandise was to be taken prior to paying for that merchandise. The claimant's actions were deliberate and are theft of property. This is misconduct. Benefits are denied.

The next issue is overpayment of benefits.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The overpayment issue is remanded to the Claims Section for determination.

**DECISION:**

The representative's decision dated October 16, 2012, reference 01, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The overpayment issue is remanded to the Claims Section for determination.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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