

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY A ABLEMAN
Claimant

APPEAL NO: 09A-UI-07473-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/12/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's May 7, 2009 decision (reference 01) that concluded Kelly A. Ableman (claimant) 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 June 11, 2009. The claimant participated in the hearing. Millie Vrough appeared on the employer's behalf. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 22, 2008. She worked full time as manager of the employer's Ottumwa, Iowa store. Her last day of work was April 10, 2009. The employer suspended her that day and discharged her on April 15, 2009. The reason asserted for the discharge was a shortage/loss.

On April 10 the claimant was preparing to go to the bank with a regular deposit and a coin change deposit. The coin deposit bag had \$230.00. At approximately 1:00 p.m. she took both bags out of the safe and closed (but did not lock) the safe. She then put both bags on a shelf under the counter for about ten minutes. She then retrieved both bags and left the store to run to the bank, about five minutes away. When she got to the bank she realized she did not have the coin change deposit bag. She immediately called back to the store and had other employees look around the store, and she immediately drove back to the store and looked all around the area she would have exited the store to her vehicle. The bag was not found. She then called higher management to report the loss. She volunteered to replace the money personally, but the employer determined to suspend her and review the matter. The claimant had been verbally counseled about a week prior that she needed to make sure the safe was

locked when it was closed. Due to this mishandling of money issue, the employer determined to discharge the claimant.

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). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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. 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. 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her loss of the deposit money on April 10. Misconduct connotes volition. Huntoon, supra. There is no evidence the claimant intentionally took or lost the money; she promptly reported the loss and promptly volunteered to replace it. Under the circumstances of this case, the claimant's loss of the money was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 7, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css