

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARGARET M HULSE
504 W IRVING
CRESTON IA 50801

CASEY'S MARKETING COMPANY
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11200-CT
OC: 09/26/04 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Margaret Hulse filed an appeal from a representative's decision dated October 12, 2004, reference 01, which denied benefits based on her separation from Casey's Marketing Company. After due notice was issued, a hearing was held by telephone on November 9, 2004. Ms. Hulse participated personally. The employer participated by Linda Cochran, Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Hulse was employed by Casey's from August 24, 1990

until September 26, 2004. She was employed full time as a cashier and clean-up person. She was discharged for selling alcohol to a minor.

The employer has a system known as "hyper-com" which will compute an individual's age after the birth date is entered. The machine is situated next to the cash register. On the counter near the register is a calendar which indicates on which dates an individual will turn 18 or 21 years of age. On September 25, Ms. Hulse asked for identification from an individual who was purchasing alcohol. She did not use either "hyper-com" or the calendar to determine if he was of legal age. Instead, she calculated his age in her head. As it turned out, the individual was only 19 and was part of a "sting" operation by the Creston Police Department. Both Ms. Hulse and the employer received tickets as a result of the incident. The employer's ticket will cost approximately \$500.00. Solely as a result of this incident, Ms. Hulse was discharged on September 26, 2004. Her only explanation for her conduct was that she was busy and trying to operate a new lottery system.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Hulse was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Hulse was discharged for selling alcohol to a minor. She had all of the tools necessary to avoid the incident. She could have used either "hyper-com" or the calendar on the counter to determine the purchaser's age. The fact that other employees may not have always used the above tools to verify age was not an excuse. Any employee who failed to use the available tools did so at his or her own peril.

The fact that Ms. Hulse was busy was likewise not justification for not fully checking the individual's identification. She acknowledged that she took the identification. It would probably have taken her only an additional few seconds to look at the available calendar to verify the age. Whether she was busy or not, she was only expected to wait on one customer at a time, the one present at the register. Ms. Hulse's failure to verify that the individual to whom she sold alcohol was of legal age resulted in a monetary fine for the employer.

For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated October 12, 2004, reference 01, is hereby affirmed. Ms. Hulse was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/b