

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA D DIERENFELD
Claimant

APPEAL NO: 10A-UI-02472-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 01/17/10
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 11, 2010 reference 01, that held she was discharged for misconduct on January 22, 2010, and benefits are denied. A telephone hearing was held on April 6, 2010. The claimant, and Leland Martin, a neighbor, participated. Darwin Otto, Store Manager, participated for the employer. Employer Exhibits 1-4 was received as evidence.

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 employment on October 29, 2006, and last worked for the employer as a full-time assistant manager on January 22, 2010. The claimant received an employee handbook that contained the policies of the employer. The claimant knew that she was not to work while intoxicated.

During the claimant's 2:00 p.m. to 11 p.m. work shift on January 21, the store lost power during a storm. When the claimant left work at about 5 p.m., she knew she was on-call to return to the store should the power be restored. While at home, the claimant consumed some wine and took some sleeping pills. When the claimant left the store, she received information from the utility company that power might not be restored until the next day.

Store Manager Otto called the claimant about 8 p.m. stating power had been restored, and the claimant needed to return and re-open. The claimant stated she had consumed some wine, and she requested to find a replacement that Otto approved. When the claimant could not find a replacement, she went to the store and re-opened.

Sac City Police officer Jansma was at the store and he believed the claimant was intoxicated to the point he called for a replacement worker. Employer Sorenson came in and when she

observed the claimant she stated it was pretty noticeable the claimant was drunk. Claimant stumbled when she walked and slurred her speech. Claimant admitted she drank, because she didn't think she would be coming back in that night.

The claimant was discharged by Area Supervisor Cullen for violation of the employer alcohol policy.

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.

The administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on January 22, 2010, for a knowing violation of the employer alcohol policy.

The claimant knew the employer alcohol policy and that being intoxicated on the job was a termination offense. The claimant knew she was on-call to return to the store should the power be restored. The claimant knew she had consumed wine, and returned to the store. The observations of employee Sorensen are consistent with a person who is intoxicated that is corroborated by the actions of a police who requested the employer replace the claimant for this reason.

DECISION:

The department decision dated February 11, 2010 reference 01, is affirmed. The claimant was discharged for misconduct on January 22, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs