

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 E KLINK
2715 AVALON DR
BETTENDORF IA 52722-3150

CASEYS MARKETING CO
CASEYS GENERAL STORE
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04549-JTT
OC: 04/02/06 R: 04
Claimant: Respondent (2)

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:

Casey's filed a timely appeal from the April 20, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 11, 2006. Claimant Margaret Klink participated. Store Manager Christine Harnes represented the employer. Exhibits One through Three were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Margaret Klink was employed by Casey's as a full-time donut and pizza maker from February 29, 1988 until February 13, 2006, when Store Manager Christine Harnes discharged her. Ms. Harnes had become Ms. Klink's supervisor on February 4, 2006.

The final incident that prompted the discharge occurred on February 13, 2006, when Ms. Klink exited the kitchen wearing the apron and visor that comprised her kitchen uniform and walked to the laundry room and walk-in cooler. The employer's written policy required Ms. Klink to remove her apron and visor before exiting the kitchen. The policy was set forth in a handbook that was kept in the kitchen. The policy was in place for kitchen sanitation purposes. The employer was concerned about cross contamination of food that would be sold to customers. On January 25, 2006, Ms. Harnes had counseled Ms. Klink about wearing her apron and visor outside the kitchen. Ms. Klink had traveled to the walk-in cooler and the donut case in her kitchen attire. On February 8, Ms. Harnes learned that Ms. Klink had worn her kitchen attire while she took trash outside to the dumpster. In response to this incident, Ms. Harnes issued a written reprimand to Ms. Klink. Ms. Klink was responsible for training other employees to work in the kitchen. In the course of discussing the dumpster incident with Ms. Klink, Ms. Harnes asked Ms. Klink what was the first thing Ms. Klink taught employees when she was training them to work in the kitchen. Ms. Klink indicated that the first rule she shared with new kitchen staff was that they were not to wear the apron outside the kitchen. On February 9, Ms. Harnes observed Ms. Klink standing outside smoking a cigarette and dressed in her kitchen attire.

When Ms. Harnes initially confronted Ms. Klink on February 13 about once again wearing her uniform outside the kitchen, Ms. Klink responded, "Fire me!" Later that day, Ms. Harnes summoned Ms. Klink and discharged her from the employment.

Prior to Ms. Harnes' tenure at the store, Ms. Klink had been allowed to wear her kitchen attire outside the kitchen if she was "on a mission." This was despite the employer's written policy.

Ms. Klink established a claim for benefits that was effective April 2, 2006, but has not received benefits.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Klink was discharged for misconduct in connection with the employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes that the employer had a reasonable basis for requiring Ms. Klink and other employees to remove their kitchen attire before exiting the kitchen area of the store. The purpose of the policy was to protect the health of customers by enforcing sanitary kitchen practices. Ms. Klink's repeated refusal to follow the policy was based on convenience. However, the time Ms. Klink saved by not removing her kitchen attire was minimal and Ms. Klink's refusal to follow the policy was unreasonable in light of the public health concern.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Klink was discharged for misconduct. Accordingly, Ms. Klink is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Klink. Since Ms. Klink has not received benefits, there is no overpayment issue.

DECISION:

The Agency representative's decision dated April 20, 2006, reference 01, is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until she has worked in and paid wages for insured work equal to ten times her weekly benefit allowance, provided she meets all other eligibility requirements. The employer's account will not be charged.

jt/pjs