

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANISHA J BUXTON
Claimant

APPEAL NO. 13A-UI-02695-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/03/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 1, 2013, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on April 4, 2013. Claimant participated. The employer participated by Diane Stevenson, Store Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Tanisha Buxton was employed Casey's Marketing Company from September 15, 2011 until February 3, 2013 when she was discharged for violation of a known company rule. Ms. Buxton was employed as a part-time clerk averaging 20 to 25 hours per week and was paid by the hour. Her immediate supervisor was Diane Stevenson.

Ms. Buxton was discharged on February 3, 2013 for an incident that had taken place the previous day. On that day Ms. Buxton had turned on an outside gasoline pump without advance payment or insuring that she had observed the transaction to minimize the chances for a "drive off." The claimant had previously been warned about following the procedure on February 14, 2012. Because the patron was authorized by Ms. Buxton to begin pumping gas although the patron was not in view and hidden by a delivery truck, the patron left without paying. The company had no identification of the type of vehicle or the license plate number.

It is the claimant's position that she did not follow the procedure because it was "too dangerous" to go outside and personally write down license numbers.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant was discharged for misconduct in connection with the work. She was.

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 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. 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).

In this matter the claimant was discharged for failing to follow a known company rule that she had received a previous warning for the same violation. The evidence in the record does not establish that Ms. Buxton was required to go outside and personally jot down the license number of gas purchasers, but only that the claimant was to be able to observe the purchases from inside the store. The claimant was aware that she was not to authorize purchases if the view of the purchaser's pump was obscured. The claimant was discharged when she again violated the known company rule causing a substantial loss to the employer.

For the reasons stated herein the administrative law judge finds that the employer has sustained its burden of proof in showing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated March 1, 2013, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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