

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUDY L PUTNAM**

Claimant

**APPEAL NO: 09A-UI-06469-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/16/08**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

Section 96.7-2-a(2) – Charges Against Employer's Account

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer)) appealed a representative's April 14, 2009 decision (reference 03) that concluded Judy L. Putnam (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 May 21, 2009. The claimant participated in the hearing. Lori Crouch 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.

**ISSUES:**

Was the claimant discharged for work-connected misconduct? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 4, 2008. She worked part time (approximately 25 hours per week) as a cook/cashier at the employer's Maquoketa, Iowa store. Her last day of work was March 26, 2009. The employer discharged her on March 27. The reason asserted for the discharge was too many disciplinary actions.

The claimant had been given two warnings on February 12 due to drawer shortages, and had been given an additional warning on February 27 due to a drawer shortage. On March 25 the employer gave the claimant a warning for attendance; she was advised that if she had any further disciplinary issues, she would be discharged.

On March 26 the claimant ate a piece of pizza but failed to pay for it before leaving for the day. It was common and accepted practice for employees to take and consume food while they were still working, but they were to pay for it with another employee and put a signed receipt into an envelope before leaving at the end of the shift. The claimant had eaten a slice of pizza at approximately 12:35 p.m. She left at the end of her shift at 2:00 p.m. but neglected to pay for the pizza; her cost would have been \$0.95. When confronted on March 27, she remembered

that she had eaten the pizza and admitted that she had forgotten to pay for it, as she had become busy with customers immediately after eating the slice of pizza. She offered to pay for the slice after the fact, and the employer ordinarily would only have issued a warning for the incident, but since the claimant had the prior disciplinary warnings, the employer determined to discharge the claimant.

The claimant established an unemployment insurance benefit year effective November 16, 2008. She filed an additional claim effective March 29, 2009.

### **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 failing to pay for the slice of pizza after receiving the disciplinary warning for unrelated issues. Misconduct connotes volition. Huntoon, supra. The evidence indicates that the claimant did not intentionally fail to pay for the pizza she had eaten. Under the circumstances of this case, the claimant's failure to pay was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. While the employer had a reasonable business cause to discharge the claimant, it 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters

immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began July 1, 2007 and ended June 30, 2008. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

**DECISION:**

The representative's April 14, 2009 decision (reference 03) 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. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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