

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHERRY PARHAM**  
Claimant

**APPEAL NO: 12A-UI-15191-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 11/18/12  
Claimant: Appellant (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Cherry Parham (claimant) appealed an unemployment insurance decision dated December 24, 2012, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Casey's Marketing Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 30, 2013. The claimant participated in the hearing. The employer participated through Shauna Layer, Store Manager. 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.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time cashier/kitchen from October 6, 2011 through September 4, 2012 when she was discharged for violating company policy and state law. The employer's policy regarding age-restricted products provides that employees caught selling age-restricted product to under-age persons are subject to immediate dismissal. Employees must request appropriate picture identification for all age-restricted product sales to those who appear to be younger than 30 years of age even though state law requires anyone under the age of 27. The claimant signed the employee handbook verification form on October 6, 2011. She was trained at the time of hire but had her annual training regarding selling age-restricted products on June 27, 2012. Employees are advised that "when in doubt do not make the sale."

The United States Food and Drug Administration (FDA) sent the employer a warning letter dated August 23, 2012 notifying the employer that one of its employees sold a pack of Marlboro Gold Pack cigarettes to a minor on June 19, 2012 at approximately 12:42 p.m. The employer conducted an investigation and determined that the claimant had sold a Marlboro Pack of

cigarettes to a minor customer on June 19, 2012 at 12:44 p.m. The employer subsequently discharged the claimant after showing her the surveillance recording.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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 to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The employer discharged the claimant on September 4, 2012 for violation of its work rules and state law after an FDA inspector witnessed the claimant sell a pack of cigarettes to a minor. The claimant knew the consequences of selling age restricted products to a minor and could have easily complied with the policy by taking minimal steps. Her violation of state law was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

**DECISION:**

The unemployment insurance decision dated December 24, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld 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.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs