

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**KRISTIN K EVANS**

Claimant

**APPEAL NO: 19A-UI-06150-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 07/14/19**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the July 31, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 26, 2019. The claimant participated in the hearing. Karen Colbin, Area Supervisor, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time store manager for Casey's from July 19, 2011 to July 12, 2019. She was discharged for having a clerk clock her out after she left the store.

Area Supervisor Karen Colbin was on vacation when she received notice from Area Supervisor Karen Fillinger, who was covering for her, that the claimant notified her she forgot to clock out July 5, 2019. The claimant said she left around 4:00 p.m. When Ms. Fillinger was correcting the claimant's time card she noticed it said the claimant clocked out at 10:06 p.m. Ms. Fillinger informed Ms. Colbin of the situation and Ms. Colbin looked at the claimant's time card and confirmed the 10:06 p.m. clock out time. Ms. Colbin called the claimant and asked her about her time card as she found it suspicious that the claimant would have driven the 12 miles back to town on a Friday night to clock out but the claimant stated she did go back and clock out.

On July 9, 2019, Ms. Colbin went to the store to go through the video of the incident. Before she watched the video she asked the claimant to verify that the date of the missed time clock punch was July 5, 2019, and the claimant indicated she was mistaken and confused about the date. Ms. Colbin watched the video and observed full-time cashier Melissa Fox clock out for the claimant at 10:06 p.m. which was the time Ms. Fox was leaving work that night. Ms. Colbin asked the claimant to watch the video and asked her to explain what happened. The claimant said Ms. Fox must have known her code and clocked her out. Each employee's code, which is used to punch in and out, is confidential and not to be given to anyone else per the employer's policy. Ms. Colbin then questioned Ms. Fox and told her she needed to tell the truth about what happened because the information needed to be turned over to human resources. Ms. Colbin

left the store to go to another store before Ms. Fox wrote her statement and on her way back to the store the claimant called Ms. Colbin and said she called Ms. Fox July 5, 2019, and asked her to clock her out and she did not want Ms. Fox to get in trouble because she was the only person to blame. Ms. Colbin received statements from Ms. Fox and the claimant stating the claimant asked Ms. Fox to clock her out July 5, 2019. Ms. Colbin faxed the statements to human resources and waited to hear its disciplinary decision. On July 12, 2019, human resources sent a corrective action statement saying the claimant's actions were inconsistent with the employer's honesty and integrity policy, scheduling and time clock procedures and the consequences of her actions was termination. Ms. Colbin gave the claimant the disciplinary action form and notified her that her employment was terminated.

The employer sends a quarterly email to employees stating they are not allowed to give out their confidential information, such as the codes they clock in and out with, and that they must clock in and out themselves. That information is also contained in the employee handbook. Additionally, the claimant is responsible for training new employees.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant was a store manager and as such was held to a higher standard than other employees. She knew or should have known not to share her confidential code with anyone else but did so when she asked Ms. Fox to clock her out, in violation of the employer's policy requiring all employees to clock themselves in and out. Additionally, the claimant would have faced no disciplinary action for simply forgetting to clock out after she reported that fact to the employer. The employer would have edited her time sheet and made a note she forgot to clock out and that would have been the end of the matter. Instead, the claimant asked Ms. Fox to clock her out in violation of the employer's policy and was then less than forthcoming about that incident when questioned by the employer. The claimant initially told Ms. Colbin she drove back to the store Friday night, July 5, 2019, and clocked herself out which was not true. Once Ms. Colbin viewed the video and clearly observed Ms. Fox clock the claimant out, the claimant stated Ms. Fox must have known her code and just clocked her out on her own which was the second dishonest statement the claimant made. It was not until after Ms. Colbin confronted Ms. Fox and explained the potential consequences to her that the claimant came forward with the truth and accepted responsibility for her actions. The claimant was dishonest with the employer regarding this incident on two occasions in addition to having another individual clock her out. The dishonesty and the policy violation in having another employee clock her out constitutes disqualifying job misconduct.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

#### **DECISION:**

The July 31, 2019, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as 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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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn