

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

SHEILA R CUTSFORTH
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CASEYS MARKETING COMPANY
CASEYS GENERAL STORE
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Appeal Number: 04A-UI-01863-DWT
OC 12/28/03 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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's February 11, 2004 decision (reference 01) that concluded Sheila R. Cutsforth (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 2, 2004. The claimant participated in the hearing. Gretchen Troge, the area supervisor, and Joan Eglseider, the district manager, 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:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on June 12, 2000. She worked full time as a store manager. Troge was the claimant's supervisor.

On November 24, 2003, Troge audited the claimant's books. According to Troge's audit the claimant's store was short over \$400.00 on November 16. When Troge asked the claimant why she had not reported this to her right away, the claimant indicated that her daily balance sheet was only short by about \$31.00.

Troge noticed the claimant indicated on her daily balance sheet an additional adjustment for \$400.00 in addition to the standard \$200.00 used for the employer's open bank. Based on the information Troge looked at on November 24, she concluded the claimant made an honest mistake. Troge notified Eglseider about her findings on November 26. Troge also notified the employer's accounting department about the claimant's mistake and learned that this kind of mistake would work itself out. The employer had recently implemented a new accounting system and neither Troge nor Eglseider knew how to make sure if a short was long or short on a particular day.

When the corporate office became aware of the problem, Eglseider was told to compare the sales of the day with the deposits of the day to determine if there were any shortages. On December 25, Eglseider told Troge how to check a daily balance sheet. Eglseider followed the procedure and also checked the deposit slips against the deposit. On December 25, 2003, the employer discovered two \$200.00 drops made by an employee had not been deposited and the slips were not with the employer's records. The deposits were on the computer record the employee made at the time of the deposit. The claimant was the only person who counted the money and made the deposits.

On December 30, 2003, the employer again talked to the claimant. The employer told the claimant the employer now had proof that \$400.00 was missing from the November 16 deposit. After the employer indicated the police would be contacted, the claimant indicated she probably fixed the books on November 16, 2003. The employer then discharged the claimant.

The claimant established a claim for unemployment insurance benefits during the week of December 28, 2003. She filed claims for the weeks ending January 10 through March 20, 2004. She received her maximum weekly benefit amount of \$300.00 each week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct,

unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant made an adjustment of \$400.00 on the November 16, 2003 daily sheet. The claimant indicated on the report she hit the wrong key, but when Troge first talked to the claimant she indicated she had no idea why Troge came up with a \$400.00 shortage. The claimant did not tell Troge about hitting a wrong key. Based on information Troge considered on November 24, she concluded the claimant had made an honest mistake on the November 16 report. Since the employer had a new accounting system in place, neither Troge nor Eglseider understood how they could verify or prove if the November 16 was accurate. It was not until December 25 that Eglseider told Troge how to verify the claimant's November 16 daily report. When Troge did this, she obtained proof there was a \$400.00 shortage on November 16. She then checked the drops against the bank deposit and discovered two drops of \$200.00 each were missing. The claimant never told Troge there were any deposits missing.

When the employer confronted the claimant on December 30, the claimant indicated that she probably fixed the books on November 16. Even though the claimant asserted there were not any missing deposits and she did not fix the books, a preponderance of the evidence indicates the claimant knowingly adjusted the November 16 records so there it was not obvious there was a \$400.00 shortage. If the deposits were all present when the claimant counted the money and made the deposit, something happened to \$400.00 and the claimant was the only person who handled this money.

The employer did not have all the information about the November 16 incident until December 25. Once the employer had proof there was a \$400.00 shortage, the claimant indicated she fixed the books. Based on this new information, the employer immediately discharged the claimant for work-connected misconduct. As of December 28, 2003, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 10 through March 20, 2004. She has been overpaid a total of \$3,300.00 in benefits.

DECISION:

The representative's February 11, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 28, 2003. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending January 10 through March 20, 2004. The claimant has been overpaid a total of \$3,300.00 in benefits she receive for these weeks.

dlw/b