

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TASHA S WATSON**  
Claimant

**CASEY'S MARKETING COMPANY**  
Employer

**APPEAL 23A-UI-06037-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/30/23  
Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

Casey's Marketing Company, the employer/appellant,<sup>1</sup> filed an appeal from the Iowa Workforce Development (IWD) June 5, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed Ms. Watson REGULAR (state) UI benefits because IWD concluded the employer dismissed her from work on April 10, 2023 for a reason that did not disqualify her from receiving UI benefits. On June 19, 2023, the Iowa Department of Inspections, Appeals and Licensing, UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Watson for a hearing scheduled for July 5, 2023.

The undersigned administrative law judge held a telephone hearing on July 5, 2023. The employer participated through Shawni Hartley, store manager. Ms. Watson participated personally. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1-3 as evidence.

**ISSUES:**

Did the employer discharge Ms. Watson from employment for disqualifying job-related misconduct?

Did IWD overpay Ms. Watson UI benefits?

If so, should she repay the benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Watson began working for the employer on May 1, 2012. She worked as a full-time kitchen manager. Her employment ended on April 10, 2023.

The employer's policy prohibits employees from buying or cashing out lottery tickets while clocked in. The employer told employees and managers about the policy at several team meetings and manager's meetings. On February 26, 2023, the employer gave Ms. Watson a final warning for buying lottery tickets while she was clocked in. Ms. Hartley reviewed the

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<sup>1</sup> Appellant is the person or employer who filed the appeal.

employer's video footage because of a cash register draw shortage and saw Ms. Watson buying lottery tickets while clocked in.

On April 9, Ms. Hartley reviewed the employer's video footage because Ms. Watson and another employee had taken longer than usual to end their shift. Ms. Hartley saw Ms. Watson buy lottery tickets in and cash out lottery tickets she already had all while clocked in. The next day, Ms. Hartley showed Ms. Watson the video from April 9 and terminated Ms. Watson's employment. Ms. Watson explained in the appeal hearing that she bought the tickets on the clock on April 9 because she didn't get a break that night and she needed to buy the tickets. IWD has not paid Ms. Watson any REGULAR (state) UI benefits on her UI claim.

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

For the reasons that follow, the undersigned concludes the employer discharged Ms. Watson from employment for job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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.

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of such the employee's contract of employment. Misconduct is 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.

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>2</sup> The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.<sup>3</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>4</sup>

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Ms. Watson bought lottery tickets while clocked in even after the employer had warned her. Despite the warning, Ms. Watson continued to engage in similar behavior. This is disqualifying misconduct. UI benefits are denied.

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<sup>2</sup> *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

<sup>3</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>4</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The undersigned further concludes IWD did not overpay Ms. Watson REGULAR (state) UI benefits and she is not required to repay any UI benefits.

Iowa Code §96.3(7) provides, in pertinent part:

*7. Recovery of overpayment of benefits.*

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Since IWD has not paid Ms. Watson any REGULAR (state) UI benefits on her UI claim, IWD did not overpay Ms. Watson any UI benefits. There are no benefits for Ms. Watson to repay IWD.

**DECISION:**

The June 5, 2023, (reference 01) UI decision is REVERSED. The employer discharged Ms. Watson from employment for job-related misconduct. Benefits are denied until Ms. Watson has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.

IWD did not overpay Ms. Watson REGULAR (state) UI benefits and she is not required to repay any UI benefits.



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Daniel Zeno  
Administrative Law Judge

July 6, 2023  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with this decision, you or any interested party may:

**1. Appeal to the Employment Appeal Board** within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

AN APPEAL TO THE BOARD SHALL 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 is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

**2.** If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to **file a petition for judicial review in District Court** within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

**1. Apelar a la Junta de Apelaciones de Empleo** dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

**2.** Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de **presentar una petición de revisión judicial en el Tribunal de Distrito** dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.