

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFFANY COPELAND
Claimant

APPEAL NO. 09A-UI-07467-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/31/08
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from an unemployment insurance decision dated May 7, 2009, reference 03, that allowed benefits to Tiffany Copeland. After due notice was issued, a hearing was held in Des Moines, Iowa on July 7, 2009 with Ms. Copeland participating and being represented by David Copeland. Exhibit A was admitted into evidence on her behalf. Store Manager Katy Brunning participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tiffany Copeland was employed as a cashier by Casey's Marketing Company from October 3, 2008 until she was discharged March 11, 2009. A few days before the discharge, an employee told Store Manager Katy Brunning that he had heard Ms. Copeland offering to trade marijuana to a customer for pain killer medication. Ms. Brunning then began an investigation. Another employee reported that she had overheard Ms. Copeland offer to sell pain medication belonging to another individual to a customer. This supposedly occurred on company premises while Ms. Copeland was on duty.

After preparing the discharge papers, Ms. Brunning called Ms. Copeland to the back room and confronted her about the allegations. Ms. Copeland made a statement that Ms. Brunning interpreted as being an admission.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that Ms. Copeland was discharged for misconduct in connection with her employment. It does not.

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 of proof. See Iowa Code section 96.6-2. The employer could have but did not provide either the written statements of the two employees or call them to testify. The employer did not and declined even to provide the names of either employee. Ms. Brunning testified that Ms. Copeland's response to the allegations was, "My family needs to eat." Ms. Copeland denied making that statement and offered testimony concerning the family's finances and her own obligations made as part of a pain management treatment program. While this evidence does not directly address the question of whether Ms. Copeland offered to sell or trade illegal or prescription medications, it does indicate that Ms. Copeland would not be likely to do so. It is, after all, impossible to prove a negative. The administrative law judge concludes that the employer's evidence is not sufficient to prove misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 7, 2009, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs