

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA ALARCON
Claimant

APPEAL NO. 12A-UI-06429-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/22/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's decision dated May 24, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on June 26, 2012. Claimant participated. The employer participated by Ms. Cynthia Arndt, Store Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Monica Alarcon was employed by Casey's Marketing Company from August 31, 2010 until April 12, 2012 when she was discharged from employment. Ms. Alarcon worked as a part-time cashier/kitchen worker and was paid by the hour. Her immediate supervisor was Cynthia Arndt, the store manager.

Ms. Alarcon was discharged based upon the employer's belief that Ms. Alarcon had provided a false statement to an assistant manager about Ms. Alarcon's scheduled working day, April 7, 2012. Prior to the shift that day Ms. Alarcon had repeatedly made inquiries from the store's assistant manager about whether Ms. Alarcon was really "needed" that day for her short work shift from 11:00 a.m. until 2:00 p.m. The assistant manager relented and agreed to let Ms. Alarcon off work that day. When the store's manager, Ms. Arndt indicated that the claimant was expected to work the claimant was placed back on the schedule and worked her shift as expected.

Because the manager felt that Ms. Alarcon had provided a false statement to the assistant manager by stating that Ms. Arndt had indicated that the claimant was not needed that day, the manager believed that the claimant should receive a warning for her conduct. Ms. Alarcon was informed to report to the facility at 11:00 a.m. on April 9, 2012. The claimant was delayed in

attending the meeting that she believed was just a general meeting and not a disciplinary meeting. The claimant called to inquire whether her daughter and mother could attend as they were together that day and the claimant requested that the meeting be rescheduled until 3:00 p.m. The employer indicated that there was no objection to the claimant's mother or daughter attending the meeting but denied the claimant's request to reschedule for later in the afternoon. No further information was given to Ms. Alarcon at that time. Subsequently, the claimant was allowed to complete another full work shift before being informed on April 12, 2012 that she was being discharged for what the employer considered to be "insubordination" because of the employer's belief that the claimant had provided an untruthful statement to the assistant manager and because the claimant had not attended the disciplinary meeting.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. 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 in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See

Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter the evidence is disputed regarding Ms. Alarcon's statement to the assistant manager. The claimant testified under oath that she did not indicate that the manager had told the claimant she was not "needed" for the shift on April 7, 2012. Claimant testified that she had attempted to talk the assistant manager into letting her off the schedule that day and that the assistant manager had agreed. The claimant further testified that when she noted that she had been placed back on the schedule, she worked the scheduled shift as required. It is the employer's further belief that Ms. Alarcon knew that she was to attend a mandatory disciplinary meeting at 11:00 a.m. on or about April 9, 2012 but that the claimant did not report or notify the employer until after the time scheduled. In contrast, the claimant testified that she was not told that she was required to attend a disciplinary meeting but thought she was being called to a general meeting about another employee and did not know that failure to attend the meeting could cause her discharge from employment. The administrative law judge notes that the claimant was not told she was being discharged during the telephone call that day and was allowed to continue working before being discharged the next week.

While hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. The administrative law judge finds the weight of evidence to be in support of the claimant and thus concludes that the claimant's discharge from employment took place under non disqualifying conditions.

DECISION:

The representative's decision dated May 24, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs