

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA J REYNOLDS
Claimant

APPEAL NO. 08A-UI-06444-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

**OC: 06/08/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's July 8, 2008 decision (reference 01) that concluded Pamela J. Reynolds (claimant) was qualified to receive 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 July 29, 2008. The claimant participated in the hearing. Kathy Sharp, the store 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.

ISSUE:

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

FINDINGS OF FACT:

Sharp rehired the claimant on May 20, 2007. The employer hired the claimant to work as a part-time donut maker. At the time of hire, Sharp did not know the claimant was not eligible to be rehired, because a former manager had not indicated this on the claimant's previous termination papers.

When the claimant worked for Sharp, she did not have an attendance problem and she performed her work satisfactorily. (This had been the reason for her previous termination.) Sharp, however, concluded the claimant exhibited a bad attitude at work. Even though Sharp came to this conclusion, she did not give the claimant any written warnings. Sharp did not record the dates on which she may have talked to the claimant about her attitude at work. The claimant did not recall any verbal warning Sharp gave her about her attitude at work.

On June 12, Sharp came back to work after being gone for awhile. The claimant was already at work when Sharp came in around 5:30 a.m. Sharp carried a 20-pound bag of donut flour and dropped it on the counter. When it made a loud noise, she made a comment to the claimant that she was now awake. The claimant concluded Sharp was in a bad mood.

When a co-worker came to work about 15 minutes later, the claimant made a comment to watch out because Sharp appeared to be in a bad mood that morning. As the claimant made this remark, Sharp came in and overheard part or all of her comment. Sharp thought she overheard the claimant say that she was tired of taking Sharp's crap and was going to quit. After Sharp thought she heard the claimant she was going to quit, she told the claimant to leave because this was her last day.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

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 claimant's testimony conflicts the employer's testimony. While an employee was present at the final incident, neither party asked this person to testify at the hearing. In determining credibility, several other factors were considered in this case. First, it is difficult to understand why the employer did not give the claimant any formal warnings if her attitude had been as bad as the employer insinuated. The claimant did not remember that the employer even gave her any verbal warnings for her attitude. The employer asserted she talked to the claimant, but had no dates as to when this occurred. The employer's assertion that her manager would discharge the claimant if she gave the claimant a written warning is not supported by any evidence other than the store manager's assertion. Based on a preponderance of the evidence, the employer's testimony that the claimant said she was going to quit and raised her voice at Sharp is not credible. Therefore, the claimant's version of what occurred the morning of June 12 is reflected in the findings of fact.

The employer established business reasons for discharging the claimant. A preponderance of the credible evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of June 8, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's July 8, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 8, 2008, the claimant is quailed to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw