

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER R MALONE

Claimant

APPEAL NO: 11A-UI-00617-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/31/10

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 6, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Sallie Maly, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2010. She worked 5 to 30 hours a week as a kitchen helper.

During her employment, the claimant was absent several days and reported to work late several days. On October 25, 2010, the employer gave the claimant a written warning for on-going attendance issues. After the claimant signed the written warning, she asked Maly why she was not scheduled to run the registers. The claimant's hours were reduced when she did not work on the registers and she needed money to support her family. After Maly told her why she was not scheduled on the registers, the claimant became very upset. The claimant left Maly's office very upset. She made comments that this was BS and she did not deserve to be treated in such a manner. When the claimant left Maly's office, she shared her frustration with a co-worker. Maly knew the claimant was upset with her. Maly became upset with the claimant after she continued expressing her frustration with Maly to co-workers. The claimant made comments that she did not have to put up with the way Maly treated her and threatened to call Maly's supervisor. Maly concluded the claimant was insubordinate and discharged her.

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. 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 and Maly presented conflicting details about the October 25 incident. They both agree they were both upset. The claimant admits she expressed her frustration with Maly to a co-worker after she left Maly's office. Even though Maly asserted the claimant made inappropriate comments in front of customers, she did not note this fact in the claimant's termination write up. Without anyone else testifying to support the employer's testimony as to what occurred a preponderance of the credible evidence does not establish the claimant was insubordinate or made inappropriate comments in front of customers.

The claimant used poor judgment when she expressed her frustrations with Maly to a co-worker. Since both the claimant and Maly were upset with one another, this isolated incident does not rise to the level of work-connected misconduct. As of October 31, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's January 6, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons that do not rise to the level of work-connected misconduct. As of October 31, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs