

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

AMANDA L SAUL

Claimant

APPEAL NO. 19A-UI-03658-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/31/19

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's April 24, 2019, decision (reference 01) that concluded Amanda Saul (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2019. The claimant participated personally. The employer participated by Jeff Parker, District Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 7, 2017, as a full-time sales associate cashier. She signed for receipt of the employer's handbook when she was hired. The employer has an Anti-Harassment and Discrimination Policy. The handbook states, "Any employee who feels that he or she has been subjected to such conduct, or has witnessed what he or she believes to be such conduct, is required to *immediately* report the concerns to any supervisor or the Senior Vice President of Human Resources for Immediate Investigation." The claimant understood she was to make her own food in the kitchen at work. Her supervisor trained her to do this. He made his own food and her co-worker made her own food.

On July 27, 2018, the employer issued the claimant a written warning for using her cellphone at work. The warning indicated that further infractions could result in the claimant's termination from employment.

The claimant worked extra hours to help the employer. The district manager said things to the claimant that hurt her feelings. In late March 2019, he asked her what sort of family she had that did not talk about certain matters. After the claimant worked ten days in a row to help the employer, she had to take three days off for medical issues. She went to the hospital for

injections in her back and her leg was swollen. She returned to work on April 1, 2019, and gave a doctor's note to the employer. Later, she found the note in the trash. She retrieved the note and placed it in the store's safe. The employer denied her sick pay for the three days.

On April 3, 2019, the employer asked her to arrive at work two hours early to work a truck order. The claimant complied. She worked several hours before her store supervisor told her to take a break. At that point he left and she made herself a sandwich. The district manager entered the store and said, "Whose sandwich is that and why are you making it?" The claimant told the district manager it was hers. She felt he was being rude to her and she did not understand why. He told her that someone else could make her sandwich. The claimant was upset and lost her appetite. She threw the item away and went into the store to stock items.

The district manager approached the claimant in a customer area with another question, "How was your vacation?" The claimant told the district manager that it was not a vacation. The district manager said, "That's not what I heard." The claimant told the district manager she would be willing to prove to him it was a medical absence by moving aside her clothing and showing him bruises on her back. The two continued the conversation to the point where both were speaking with raised voices. The claimant asked the district manager why he always had to be a jerk. The district manager told the claimant to leave. The claimant asked if she was being fired. The district manager said, "Leave and don't come back."

The claimant filed for unemployment insurance benefits with an effective date of March 31, 2019. The employer participated personally at the fact finding interview on April 23, 2019, by Stefanie Rawles, Unemployment Insurance Consultant for Equifax.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The district manager terminated the claimant after reporting to him he was being "a jerk". While the employer should expect professionalism from the claimant, it must also expect professionalism from the district manager.

The district manager made comments about the claimant's family, reprimanded her for following a policy she was trained to follow, and talking to her about a private medical matter in a customer area. She reported his inappropriate harassing conduct to her district manager, he retaliated and terminated her. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's April 24, 2019, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs