

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNA BLAHA
Claimant

APPEAL NO. 11A-UI-04996-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 3/21/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from two fact-finding decisions dated April 4, 2011, reference 03, and April 12, 2011, reference 03. Those decisions both held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 10, 2011. Claimant participated personally. Employer participated by Deena White, Area Supervisor. Employer Exhibit 1 was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds as follows. Claimant began working for the employer on October 26, 2010 when Casey's acquired the store where she worked. Claimant was discharged on March 10, 2011 by employer because she had allegedly written bad checks to Casey's back in April 2001.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct.

Ms. Blaha allegedly wrote a couple of small bad checks to Casey's back in 2001. The claimant testified that she could not remember ever writing any bad checks to Casey's but acknowledged that it was within the realm of possibility that bad checks had been written from her account in the 2001 timeframe. No collection efforts were ever initiated. It should be noted that Ms. Blaha was credible in all respects.

Casey's acquired the store where Ms. Blaha had worked for several years in October 2010. Ms. Blaha became a Casey's employee on October 26, 2010. Casey's apparently ran some type of check to see if she owed Casey's any money and discovered the checks in question. In December 2010, claimant's supervisor, Josh Borhn, approached her and told her that she had to pay bad checks she had written to Casey's back in 2001. Claimant contacted an 800 number which turned out to be a collection agency. Proof of the debt was never sent to the claimant. The collection agency told Ms. Blaha that she owed \$30.00 or \$40.00 in principle, but that the total debt was \$299.49 with penalties and interest. In order to save her job, she agreed to try to

pay it off. Ms. Blaha earned \$8.50 per hour and was unable to make the payments she promised.

Casey's introduced its "Personal Checks" policy as an exhibit at the hearing. (Employer Exhibit 1, p. 2). The policy states that if "it is discovered that a new or rehired employee has previously written a non-sufficient funds check to any Casey's store, the employee must make full payment for the returned check plus any applicable service fees within 30 days of hire/rehire or the employment will be terminated." (Employer Exhibit 1, p. 2).

In reality, Casey's has never even proven that Ms. Blaha owes them any money. No proof of the debt exists in this record outside of a hearsay claim by an unnamed collection company. To the extent that Ms. Blaha honestly acknowledged that the bad checks were "within the realm of possibility" it is the finding of the undersigned administrative law judge that these actions were far too remote to be considered a current act of work-related misconduct under Iowa law. To the extent the policy is applicable it is found that the policy is overbroad and clearly encompasses a great deal of conduct which will never be found to be misconduct under Iowa law. In addition, Casey's did not follow up on its own policy in a timely fashion. The claimant was first hired by Casey's in October 2010. It did not bring up the checks in the hiring process. In fact, it did not take action against the claimant until March 2011, six month after she was hired. Even if the claimant's actions could be considered misconduct, it was not a current act.

For all of the reasons stated herein, the employer has failed to demonstrate work-related misconduct.

DECISION:

The fact-finding decisions dated April 4, 2011, reference 03, and April 12, 2011, reference 03, are affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/css