

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY J HOLCK
Claimant

APPEAL NO: 14A-UI-04947-DWT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/13/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

AMENDED PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 5, 2014 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the June 2 hearing. Lynette Reekers, the area supervisor, appeared on the employer's behalf.

When the decision for this appeal was issued on June 12, 2014, the administrative law judge incorrectly stated the employer's account would not be charged. Since the claimant was discharged for non-disqualifying reasons and the employer is a base period employer, the employer's account cannot be relieved from charge.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge issues this Amended Decision to correct the fact the employer's account is subject to charge. No other change has been made in the decision issued on June 12, 2014.

ISSUE:

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

FINDINGS OF FACT:

The employer hired the claimant in August 2012 to work 25 to 32 hours a week as a cook. When the claimant was hired, she signed a form acknowledging the employer had a handbook of rules and policies.

The employer received a customer complaint on March 10, 2014. The customer reported that as a result of the claimant yelling at a co-worker, the customer would not go into the employer's business.

Before March 10, the manager told the claimant she could make personal phone calls outside. When the claimant took out garbage on March 10, she grabbed the employer's phone to make a quick call to her son to make sure he was all right. The manager's girlfriend had told the claimant earlier, "No personal calls." She saw the claimant take the phone outside. When the claimant came back inside, the assistant manager accused the claimant of trying to sneak the

fact she was making personal phone calls. The claimant was upset with the manager's girlfriend because she acted like a manager and was not. The customer heard the claimant say, "Just because you sleep with the manager, does not make you a manager." Later during this work shift, the claimant apologized to the girlfriend's manager for her outburst.

As a result of the customer's March 10 complaint, on April 9 the employer gave the claimant a written warning for losing her temper at work. About this same time, the manager told the claimant that her son could call her instead of the claimant calling him because she was not allowed to make personal calls.

On April 14, the claimant went to work after getting very little sleep. Her husband had surgery the day before. The claimant's son called her at work and she told him that he was not to wake up his father on April 14, 2014. She asked her son to call the post office to have them hold mail. A short time later, the claimant's son called again to report that no one answered the post office phone to have the mail held. Shortly after this conversation, the manager confronted the claimant when she was busy and told her that she already had two personal phone calls.

After the claimant finished making sandwiches, she went to talk to the manager. While he was helping a customer, the claimant quietly made the comment, "Why are you so mean to me?" The claimant then left. After the manager was finished with the customer, he went to the claimant, who was very emotional. She then told the manager about her husband's surgery the day before and that she had been up all night. The claimant also told the manager, "You are mean and you're acting like an asshole." The manager told the claimant to get it together or go home. She told him she would get herself under control. The claimant worked the rest of her shift.

The employer discharged the claimant on April 17 because she again lost her temper at work.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer's witness had to rely on hearsay information because no one with personal knowledge about the incidents testified on the employer's behalf. The claimant's testimony is credible. As a result, the claimant's testimony must be given more weight than the employer's testimony.

The evidence establishes that on March 9, the claimant made a derogatory comment to a co-worker. The employer gave her a written warning for this incident a month later. The employer acknowledged the personal phone call issue was not the reason for the claimant's discharge. Instead, the employer discharged her because of the comment she made in the presence of a customer and then the comment she made to the manager in private. Given the fact the claimant was emotionally drained and extremely tired because of her husband's surgery the day before, the evidence establishes the claimant used poor judgment when she asked the manager quietly why he was so mean to her in the presence of a customer. The claimant acknowledged this comment may not have been appropriate in the presence of a customer. The other comments the manager reported were either not directed at him or were said in private. The claimant's conduct on April 14 does not rise to the level of work-connected misconduct. As of April 13, 2014, the claimant is qualified to receive benefits.

AMENDED DECISION:

The representative's May 5, 2014 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 13, 2014, the claimant is qualified to receive benefits, provided he 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