IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

CARROLL P HERRERA
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 09A-UI-01968-S2T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/04/09 R: 01
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's January 29, 2009 decision (reference 01) that concluded Carroll Herrera (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 2, 2009. The claimant participated personally. The employer participated by Sara Luebbert, Supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on April 21, 2005, as a full-time register clerk/cook. The claimant signed for receipt of the employer's "Selling Age Restricted Products" policy on April 21, 2005. The employer had not issued the claimant any warnings during her employment. In June 2008, the claimant fell at work and hit her head. She suffered from dizziness and disorientation but did not seek medical assistance.

On or about January 4, 2009, the claimant was working and approximately six customers were shopping. Part of the customers was a group of young people. The claimant recognized one of the youth as being a person that she had previously checked his identification. She knew that he was over 21 years of age. The claimant did not realize that another youth who looked just like him was also a customer. This person was the brother of the person she previously confirmed was over 21 years of age. The younger brother purchased lottery tickets from the claimant. The claimant did not check his identification. Later the father of the brothers complained to the employer that the claimant sold a lottery ticket to his underage son.

The employer terminated the claimant on January 5, 2009. On or about January 15, 2009, the claimant was diagnosed with a concussion and applied for workers' compensation benefits.

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:
>
> 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.

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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v. Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the case at hand, the employer has provided a single incident of carelessness. That carelessness appears to have been related to the disorientation the claimant felt after her work-related injury. The employer has not provided sufficient evidence that the claimant's single act of negligence that occurred after the claimant's work-related head injury had any wrongful intent. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

DECISION:

The representative's January 29, 2009 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw