IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIDGET A HILDESTAD
Claimant

FAREWAY STORES INC
Employer

APPEAL NO. 07A-UI-06356-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/27/07 R: 04
Claimant: Respondent (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Fareway Stores, Inc. filed an appeal from a representative's decision dated June 14, 2007, reference 01, which held that no disqualification would be imposed regarding Bridget Hildestad's separation from employment. After due notice was issued, a hearing was held by telephone on July 12, 2007. Ms. Hildestad participated personally. The employer participated by Kim Garland, Human Resources, and Alan Weimerskirch, Grocery Manager.

ISSUE:

At issue in this matter is whether Ms. Hildestad was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hildestad was employed by Fareway Stores, Inc. from November 14, 2005 until June 1, 2007. She worked approximately 30 hours each week as a grocery clerk. Ms. Hildestad was discharged because she left work early on May 30. She was scheduled to get off work at 10:00 p.m. Employees are expected to remain at the store until all duties are performed, even if it is after 10:00 p.m. Ms. Hildestad had a history of leaving at 10:00 p.m. when she was scheduled to work until closing. Her supervisor was aware that she was doing so. She had to leave at 10:00 because her husband works at night and has to leave home at 10:15 p.m. She lived ten minutes from work. Ms. Hildestad told her supervisor when she arrived at work on May 30 that she would need to leave at 10:00. She was not told she could not.

In making the decision to discharge, the employer also considered comments made by Ms. Hildestad on May 29. She referred to a coworker as "worthless" and a "liar." The comments were not made directly to the coworker but to the manager. Later in the day, Ms. Hildestad approached management in the office and said to get "your lazy butts" down to help in the egg section. The comment was made in a joking manner and not in anger. She was told she needed to watch what she said.

Ms. Hildestad had not been warned in writing since June 6, 2006. The manager did speak with her on March 14, 2007 because her shirt was not the type required by the dress code. As a result of Ms. Hildestad leaving at 9:54 p.m. on May 30, she was discharged on June 1, 2007.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). In order to sustain a disqualification, the evidence must establish that the discharge was prompted by a current act that constituted misconduct within the meaning of the law. In the case at hand, Ms. Hildestad's discharge was triggered by her early departure on May 30. She left six minutes before the scheduled time to leave and before the manager had released other employees.

The administrative law judge found Ms. Hildestad's testimony credible concerning the fact that she had been allowed to leave at 10:00 in the past because of her husband's work schedule. Since her husband has to leave at 10:15 to get to his job, it seems more likely than not that Ms. Hildestad had left early on other occasions before May 30. The fact that she had not been disciplined for doing so supports her contention that management was aware of her actions. For the above reasons, the administrative law judge concludes that her early departure on May 30 was not an act of misconduct.

The employer has failed to establish any current act that rises to the level of disqualifying misconduct. She had made reference to a coworker as "worthless" and a "liar" on May 29. However, she did not make the comments directly to the coworker. The comment made to management on May 29 was intended as a joke. It appears that the work environment is such that comments like the one made by Ms. Hildestad are made and acceptable as playful banter. Although Ms. Hildestad may have been an unsatisfactory employee, the evidence failed to establish that she deliberately and intentionally acted in a manner she knew to be contrary to the employer's interests or standards. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, benefits are allowed.

DECISION:

The representative's decision dated June 14, 2007, reference 01, is hereby affirmed. Ms. Hildestad was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw