

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETTYE FUHS**

Claimant

**APPEAL NO. 11A-UI-09418-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 12/26/10**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Bettye Fuhs (claimant) appealed an unemployment insurance decision dated July 11, 2011, reference 04, which held that she was not eligible for unemployment insurance benefits because she was discharged from Casey's General Stores (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 9, 2011. The claimant participated in the hearing. The employer participated through Kasey McGurren, manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 11, 2011 as a part-time cashier but was shortly thereafter moved to a full-time donut maker. The employer has a check cashing policy which expects employees to have sufficient funds to cover written checks. If an employee writes a check that is returned for non-sufficient funds, the employee has 30 days to make full payment, which includes any processing costs. Failure to cover the costs of a non-sufficient funds check within 30 days, writing multiple non-sufficient funds checks, writing an excessively large check on non-sufficient funds, and/or writing a check on a closed account will result in termination.

The claimant's last day of work was June 13, 2011 and the manager was informed by the corporate office that the claimant could not return to work because she wrote a check for \$20.43 in 2006 and never paid for it. The claimant was not scheduled on June 14 and 15, 2011. The manager contacted the claimant on June 15, 2011 and told her she could not return to work because of the non-sufficient funds check that was not covered. The claimant borrowed the money and paid off the check and the extra fees. She contacted the employer on June 17,

2011 and told the employer the check had been paid. The manager told the claimant she could not return to work because she had written the non-sufficient funds check.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The employer discharged the claimant on June 17, 2011 for writing a check to the employer on non-sufficient funds in 2006 and never paying for it. The act for which the claimant was discharged was done prior to the claimant's employment and was not work-related. The employer did not meet its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

The employer is not a base period employer and its account is not subject to any charges during the claimant's current benefit year. If the claimant establishes a subsequent benefit year, the wage credits she earned from April 11, 2011 through June 17, 2011, would be subject to charge since the employer discharged her for non-disqualifying reasons.

**DECISION:**

The unemployment insurance decision dated July 11, 2011, reference 04, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/kjw