

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIANE M PARISOT

Claimant

APPEAL NO: 11A-UI-10805-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

CASEY'S GENERAL STORES

Employer

OC: 07/24/11

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Diane M. Parisot (claimant) appealed a representative's August 16, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Casey's Marketing Company/Casey's General Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 8, 2011. The claimant participated in the hearing. Kristy Studer appeared on the employer's behalf. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 24, 2008. She worked full time as a kitchen worker at the employer's Davenport, Iowa store. Her last day of work was July 24, 2011. The employer discharged her on that date. The stated reason for the discharge was standing around not working after prior warnings.

The claimant had been given written warnings on May 18, 2010, July 6, 2010, and April 14, 2011 for not doing stocking work as required. On July 22, 2011 she had been given a written warning for not doing cleaning and not prepping vegetables as required on two occasions, July 19 and July 21.

The store manager, Ms. Studer, had conducted two staff meetings, on June 2 and July 10, 2011, regarding problems with staff standing around and not working. All staff, including the claimant signed an acknowledgement that they were being given a warning for standing around; Ms. Studer advised the staff, including the claimant, that further incidents could lead to discharge. Additionally, on July 10 Ms. Studer verbally admonished the claimant on three different occasions that she was continuing to stand around when she should be working.

On July 24 Ms. Studer was watching the video surveillance footage from July 22 for an unrelated reason. She observed that there was a 45-minute period in which the claimant was standing around near the end of the counter, not working. As a result of this additional incident after the prior warnings, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The gravity of the incident and the number of prior violations and prior warnings are factors considered when analyzing misconduct.

The claimant's standing around not working for an extended period of time after being given the prior warnings, particularly where the most recent warnings were given only few weeks prior to the final incident, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 16, 2011 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 24, 2011. This disqualification continues until the

claimant has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css