

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN L MOORMAN
Claimant

APPEAL NO: 12A-UI-10385-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 08/05/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 24, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account is subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Jeff Oswald, a representative with Unemployment Insurance Services, appeared on the employer's behalf. Chris Frainer, the general manager, testified on the employer's behalf. During the hearing Employer Exhibits One, Two and Three were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in March 2009. She worked as a part time shift manager. The claimant understood employees did not get free food. The employer's policy allows employees to receive a 50 percent discount on food when they are working and a 20 percent discount when they are not working.

The claimant had been off work for a while in March as the result of a work-related injury. When she returned to work by late March or early April, she was short on cash. The claimant has low blood sugar issues and must have something to eat at various times. When she returned to work, she asked Frainer if she could eat food and pay for it later on payday. She understood he allowed her to do this.

On April 4 at 7:17 a.m. a video showed the claimant checking out food and did not charge herself for the food. The amount of food she checked out had a retail value of \$4 to \$5. On April 5, a video showed the claimant at 7:47 p.m. ringing up a meal that she did not charge herself for or pay. This could have been food for a shift supervisor from another store who received free food. A manager did not verify the claimant's meals as the employer's policy required. (Employer Exhibit One.)

When Frainer reviewed the video on April 6, he noticed both the April 4 and 5 incidents. On April 8, the employer presented the claimant with two written warnings, one for the April 4 incident and one for the April 5 incident. The employer told the claimant to sign the two written warnings. (Employer Exhibits Two and Three.) After she signed the warnings, the employer discharged her.

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).

The claimant admits she checked out food on April 4 and 5 and did not pay for the food. Since the employer did not refute the claimant's assertion that a shift supervisor from another store received free food, the April 5 incident could be attributed to this shift supervisor. The claimant acknowledged she did not pay for some food in early April because she understood the employer gave her permission to eat food and pay for the food on pay day. The employer did not dispute this assertion either. The claimant used poor judgment when she failed to have a manager verify her employee meal.

The fact the employer gave the claimant two written warnings on April 8, the day the employer discharged her for incidents on April 4 and 5 is troublesome. In this case the claimant understood the food policy. If the employer warned her about what she appeared to have done on April 4 and 5 and given the claimant an opportunity to explain what had happened, the outcome may have been different.

Based on the video tapes record of events on April 4 and 5, the employer established justifiable business reasons for discharging the claimant. The facts establish the claimant used poor judgment when she failed to have management verify her employee meals, but the facts do not establish that she intentionally disregarded the employer's policy. The claimant did not commit work-connected misconduct. As of August 5, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's August 24, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 5, 2012, the claimant is qualified to receive benefits, provided she 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