IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATHERINE M EDWARDS
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO: 13A-UI-12015-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/22/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's October 18, 2013 decision (reference 01) that concluded Katherine M. Edwards (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was convened on November 19, 2013, and reconvened and concluded on December 18, 2013. The claimant participated in the hearing, was represented by Richard Vander Mey, and presented testimony from one other witness, Amy Pansegrau. Bonnie Martine appeared on the employer's behalf and presented testimony from two other witnesses, Christina Rhodes and Alisha Weber (solely on the issue of participation in the fact-finding interview). 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 23, 2006. She worked full time as store manager of the employer's Toledo, Iowa store. Her last day of work was September 26, 2013. The employer discharged her on that date. The reason asserted for the discharge was being responsible for a fiscal loss the employer attributed to giving away company property, specifically, pizza slices, sub sandwiches, and cookies.

In about June 2013 the employer became concerned that the claimant's store was only generating a gross profit margin of 55 percent, in comparison to 61 to 63 percent as was typical and was the claimant's store had done in the past. On or about September 4 the area supervisor, Martin, received a letter composed by two of the store employees, one of whom was

Rhodes, an assistant manager in the store, reporting that the claimant had a practice of giving away items of food to diesel fuel purchasers. Martin and a district manager calculated that given the drop in the gross profit margin, the claimant must have given away $18,000.00 in food products since 2011. As a result, the employer determined to discharge the claimant.

The claimant acknowledged that from time to time she did give away an item of food to a customer who might be disgruntled to some degree. She denied that it was a regular practice. She had been told in management meetings that as store manager she had the discretion to "do what she needed to do 'within reason' to keep customers happy." The claimant acknowledged that she had not recorded these food gifts on the customer service log sheets as she could or should have, but only on the food waste out forms. When the employer made its decision for discharge, it was not aware of any transactions where the claimant gave away any food any more recent than September 3.

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). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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 reason cited by the employer for discharging the claimant is the conclusion that she was responsible for a large fiscal loss caused by routinely giving away food to diesel fuel customers. First, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988). The employer was aware of no incident more recent than over three weeks prior to the employer's discharge of the claimant. *Larson v. Employment Appeal Board*, 474 N.W.2d 570 (Iowa 1991). Further, the administrative law judge is not persuaded that the employer has established that the claimant gave away food on more than an occasional basis, or that the

amount calculated as being the "loss" was the most reasonable explanation for the drop in the gross profit margin. Finally, the employer has not established that the claimant had not been given the discretion to give away food as she felt appropriate. While she could have protected herself better had she documented this give away on the customer service log sheets, under the circumstances of this case, her failure to do so was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 18, 2013 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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