

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY BIRNBAUER
Claimant

APPEAL NO: 10A-UI-00683-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12-13-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 6, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 4, 2010. The claimant participated in the hearing. Char Miller, Area Supervisor and Randy Denham, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time doughnut maker for Casey's from April 2003 to December 15, 2009. She was previously been a manager but stepped down in 2007 and became a day cashier and second assistant manager at another store and then became a doughnut maker in August or September 2009. Her boyfriend worked at a different store. He had been due a raise after his first year which ended November 16, 2009. When he did not receive the raise he talked to the claimant about it incessantly and she was tired of hearing about it. On December 11, 2009, she stopped by his store at the request of her manager to pick up some salsa he had borrowed from her store. When she walked in another employee was telling the claimant's boyfriend he would not get his raise for awhile and he was very upset. Although her boyfriend's review was done November 16, 2009, the store manager did not like a comment he wrote on the review so he ripped it up and threw it away and said he would do another review but it had not been done as of December 11, 2009. The claimant's boyfriend had asked the store manager about doing another review but he was always too busy. The claimant told her boyfriend to go to human resources so he picked the torn up review out of the trash and taped it together. After listening to her boyfriend complain more December 11, 2009, the claimant went into the manager's office and looked up her boyfriend's start date and then returned the computer to the page it was on. As a former manager and second assistant manager the claimant knew how to find the information on the computer. She did not look at any other employee's information which contained their social security number, driver's license

number and date of birth. The employer learned of the situation and the store manager and area supervisor watched video of the incident and observed the claimant in the manager's office on the computer in violation of the employer's policies prohibiting employees from other stores being in the manager's office as well as a violation of the employer's code of conduct and ethics policy and a breach of confidentiality. The claimant's employment was terminated December 15, 2009. The claimant received a verbal warning for being on the computer at her own store in September or October 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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 proving disqualifying misconduct. 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 substantial and 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). While the claimant should not have gone on the manager's computer at the store where her boyfriend worked, she

did so because as a former manager and second assistant manager she knew how to find the information regarding her boyfriend's start date and potential raise date that he desperately wanted and was talking to her about continuously and she basically wanted to make him cease talking to her about it by providing that information. There is no evidence she looked at any other employee's personal information or that their privacy was compromised. Although her boyfriend should not have asked her to check his information on the computer and she should have resisted his pleading, this was an isolated incident of poor judgment on the part of the claimant and as such does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The January 6, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css