

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BILLIE JO RICK

Claimant

APPEAL NO. 10A-EUCU-01178-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 02/14/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 14, 2010, reference 04, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on January 31, 2011. The claimant participated personally. The employer participated by Connie Sublet and Cara Dennis.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Billie Jo Rick was employed by Casey's Marketing Company from July 26, 2010 until October 12, 2010 when she was discharged from employment. Ms. Rick held the position of full-time assistant manager and was paid by the hour. Her immediate supervisor was Cara Dennis.

The claimant was discharged after an hourly employee reported that Ms. Rick had telephoned the hourly employee to determine if a daily bank deposit had been properly secured in a locking file cabinet. The employer believed that Ms. Rick had authorized the hourly employee to use keys that are reserved for management use and believed that the claimant's failure to know whether she had secured the deposit to be a serious error warranting discharge.

On the day in question Ms. Rick had been extremely busy. In route home the claimant thought about whether she had secured the bank deposit or not. Because the claimant could not clearly remember locking up, she called the hourly employee to ensure that she had done so.

Prior to the incident in question the claimant had not been warned or counseled about a similar error.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 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 the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 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. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant denial of job insurance benefits. Such misconduct but 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 1988). While the employer's decision to terminate Ms. Rick may have been a sound decision from a management viewpoint, the administrative law judge concludes based upon the evidence in the record that the claimant did not have the

requisite “wrongful intent” as to establish disqualifying misconduct. The administrative law judge concludes based upon the evidence in the record that incident was an isolated incidence of carelessness in an otherwise unblemished employment record. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative’s decision dated December 14, 2010, reference 04, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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