IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES A FLEMING
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO: 14A-UI-01757-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/05/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's February 6, 2014 decision (reference 02) that concluded James A. Fleming (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 held on March 10, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Mary Hanrahan appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer's account subject to charge?

OUTCOME:

Affirmed. Benefits allowed. Employer's account not subject to charge in current benefit year.

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2013. He worked full time as an assistant manager at the employer's Maquoketa, Iowa store. His last day of work was January 5, 2014. The employer discharged him on that date. The reason asserted for the discharge was that the employer found he generally "would not act professional, often losing his temper and say inappropriate things to other employees about manager and company, would not clean, stock or help in kitchen, and since he was manager he should . . . not have to cook. Broke many policies and would not follow procedures.

On January 4 the claimant had been given a documented and signed verbal warning for failure to ensure that the floor was adequately cleaned upon closing on December 31, January 1, and January 2, and also on those days no burnishing was done, no stocking in the cooler was done, no ice was bagged, and no shelves were cleaned. The warnings specified that "the following consequences will occur if employee fails to meet [the employer's expectations regarding] the above: further write ups, suspension, and or termination."

The employer's witness, Hanrahan, is the area store supervisor. She assumed something further had occurred on the night of January 4 or on January 5 to trigger a decision on the part of the store manager to discharge the claimant. However, she did not know what that specific conduct might have been, or why the next step of discipline was discharge rather than a further write up.

The claimant established an unemployment insurance benefit year effective January 5, 2014.

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 that he generally was not following the employer's policies. Conduct asserted to be disqualifying misconduct must be both specific and current. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988); *West v. Employment Appeal Board*, 489 N.W.2d 731 (Iowa 1992). While there was some specific conduct identified for December 31, January 1, and January 2, the claimant had already been disciplined for that in the January 4 warning. There is no showing as to what specific conduct the claimant might have engaged in after that warning that would constitute

misconduct. A mere allegation of misconduct without definite evidence is not sufficient to result in disqualification. 871 IAC 24.32(9). 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.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2012 and ended September 3, 2013. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's February 6, 2014 decision (reference 02) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs