

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACQUELINE A KOESTNER**  
Claimant

**APPEAL NO. 07A-UI-06750-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 05/27/07 R: 01  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jacqueline Koestner filed an appeal from a representative's decision dated July 6, 2007, reference 01, which denied benefits based on her separation from Fareway Stores, Inc. After due notice was issued, a hearing was held by telephone on July 26, 2007. Ms. Koestner participated personally. The employer participated by Kim Garland, Human Resources, and Matt Shannon, Manager. Exhibits One through Seven were admitted on the employer's behalf.

**ISSUE:**

At issue in this matter is whether Ms. Koestner was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Koestner was employed by Fareway Stores, Inc. from July 11, 2005 until June 1, 2007. She worked approximately 20 hours each week as a grocery clerk. She was discharged from the employment.

Ms. Koestner received a written reprimand on March 23, 2006 because she balked at assisting a coworker. The coworker had a customer in her lane who wanted to purchase cigarettes. Because the coworker was a minor, she requested that Ms. Koestner ring up the sale. When she received no response, she asked again. The coworker held up the cigarettes and asked Ms. Koestner a third time to ring them up. Ms. Koestner said "no," and the coworker indicated she would get a manager. Ms. Koestner then came over and commented to the effect that if she was going to receive hours and be treated like a high-schooler, she was going to act like one and not ring up cigarettes or alcohol. She eventually did ring up the cigarettes as requested. Ms. Koestner signed the reprimand she received as a result of the incident.

Ms. Koestner did not have any other issues until May 23, 2007, when a customer called to voice her dissatisfaction with the fact that Ms. Koestner complained about the fact that other checkers were not doing anything. The matter was not discussed with Ms. Koestner until June 1, the day of discharge. The decision to discharge was prompted by the events of May 29, 2007. When

the manager noted that Ms. Koestner was wearing sunglasses at work, he advised her that she could not do so. She indicated she was not feeling well and needed the glasses. She took the glasses off and went to the restroom. When she came out of the restroom approximately 15 minutes later, the manager suggested she go home if she was not feeling well. She indicated she did not feel the sunglasses were a big deal and that she could not help it if she was ill. The manager again suggested she go home and she left.

On her way out of the store, Ms. Koestner made a comment as she was walking past the meat case. She stated, "We need to get someone more understanding up front because that was ridiculous." She then went past a checkout lane and stated that the manager was an "ass" for not letting her get her eyes in focus. She also stated that he favored some people and talked to few people. As a result of the comments she made on her way out, Ms. Koestner was discharged on June 1, 2007.

#### **REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Although the employer established that Ms. Koestner was a less than satisfactory employee, substantial misconduct has not been established. Ms. Koestner received a written reprimand on March 23, 2006. Her deliberate refusal to ring up the cigarettes for her minor coworker constituted an act of misconduct. However, the employer did not issue any further reprimands until the date of discharge.

Ms. Koestner's conduct of May 29 consisted of making what the employer felt were inappropriate statements in the presence of customers. Her statement in front of the meat case was that someone more understanding was needed up front. Although she may have been venting, she did not use profanity. The employer's written statement does not indicate she was being loud and boisterous when she made the comment. When she was at the checkout line, Ms. Koestner referred to the manager as an "ass." This might be a different matter if she had used the term "asshole." The term could as easily refer to one being a "jackass," which is a fairly benign term. At any rate, it was poor judgment on her part to complain at all in the presence of customers.

Given the amount of time that had elapsed since her prior reprimand, the administrative law judge is inclined to view the conduct of May 29 as an isolated instance of poor judgment or a minor peccadillo. Conduct so characterized is exempt from the definition of misconduct. See 871 IAC 24.32(1). While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons cited herein, the administrative law judge concludes that the employer has failed to establish substantial misconduct as is required for a disqualification from benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated July 6, 2007, reference 01, is hereby reversed. Ms. Koestner was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw