

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA A HASTIE

Claimant

APPEAL NO. 14A-UI-06106-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/18/14

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's decision dated June 4, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on July 8, 2014. Claimant participated. The employer participated by Ms. Stacie Hansen, Area Supervisor, and Ms. Janet Raible, Store Manager. Employer's Exhibits A through H were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Debra Hastie was employed by Casey's Marketing Company from March 3, 2014 until May 16, 2014 when she was discharged from employment. Ms. Hastie was employed as a part-time doughnut maker and was paid by the hour. Her immediate supervisor was the store manager, Janet Raible.

Ms. Hastie was issued a warning by her employer on May 13, 2014 because it had been determined that Ms. Hastie had at times performed services for the employer before clocking in for her early morning shift, so that she could meet employer performance expectations. Ms. Hastie was reminded at that time of the company policy which prohibits employees from working off the clock and warned not to engage in that conduct in the future.

During the warning, Ms. Hastie inquired about some duties that she had performed for the company by decorating cookies at home. The company checks surveillance tapes and concluded that Ms. Hastie had at times taken company products home to decorate cookies and subsequently returned the products to the employer when the decorating was completed. Although the claimant had self-reported this activity at the time of the warning and had not

engaged in the conduct after the warning, a decision was nevertheless made to terminate Ms. Hastie from her employment. The employer concluded that because Ms. Hastie's statements do not agree with the statements of the manager, that Ms. Hastie had made false statements regarding the issue.

On April 28, 2014, the claimant had been encouraged to decorate cookies for the company at home and the claimant's supervisor had assisted Ms. Hastie in picking out the ingredients for the decorating. The cookie decoration was part of a promotional program by the company where one store competed against the other for cookie decorating.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes disqualifying misconduct. It does not.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In discharge cases the employer has the burden of proof in establishing disqualifying conduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious

enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand the evidence establishes that the claimant was discharged for an event that had taken place prior to a warning that had been served upon the claimant for working off the clock. Ms. Hastie testified with specificity about the instructions given to her by her supervisor to decorate cookies at home and off the clock so that the company could be competitive in a company cookie decorating contest. The administrative law judge finds the claimant's testimony to be credible and not inherently improbable. The administrative law judge concludes that the claimant did not make false statements to the employer about the matter. The claimant had self-reported the incident and the incident had taken place prior to the warning that had been served upon the claimant about working off the clock.

For the reasons stated herein, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying misconduct on the part of the claimant. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 4, 2014, reference 01, is affirmed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs