

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEEJA J DAUGHERTY
Claimant

APPEAL NO. 10A-UI-15772-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 10/24/10
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 12, 2010 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Zo Ohlson, the claimant's supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is disqualified from receiving benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 2005. The claimant worked as a full-time store manager.

After the claimant reported an assistant manager's daughter had been in the store for an extended period of time, the employer decided to hold a store meeting. Other employees were also violating the policy that family members could not be in the store for an extended while an employee worked. Management understood this was a problem with many of the employees' family members and decided to review the policy and then enforce it.

At an August 25, 2010 meeting, the employer informed all employees that family members were not allowed to stay at the store for an extended time. If the family member was in the store for 10 to 15 minutes, that was all right, but then they needed to leave. Employees, including the claimant, signed a form indicating they understood this policy.

On October 20, two assistant managers called Ohlson and complained that the claimant's daughter and grandson had been in the store for extended periods the last two to three days. The assistant managers were not happy. Ohlson reviewed the store's video and verified the claimant's daughter had been in the store about seven of the nine hours the claimant had worked. The claimant's daughter appeared upset and was not watching her one- or

two-year-old son. He pushed a cart in the store and blocked a restroom so a disabled customer who wanted to use the restroom had to wait for someone to move the cart he had. The claimant's grandson also went in and out of the kitchen.

The claimant's daughter was at the store because she had an appointment in town and did not have a driver's license. The claimant's daughter came to work with the claimant and waited for a ride home after the claimant finished her shift. Even though the claimant may have told her daughter to leave the store at various times, she always came back. The claimant's daughter could have walked to the town library, but did not.

After Ohlson reviewed the store's video tape, she told the claimant what she saw and discharged her for violating the employer's policy the employer had gone over and talked to all employees about in late August 2010. The employer discharged the claimant on October 21, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew it was against the employer's policy for family members of an employee to stay in the store for an extended time. After the claimant reported this problem with an assistant manager, the employer met with all employees in late August to emphasize that family members could not stay in the store for an extended time when employees worked. As the store manager, the claimant was responsible for enforcing and following this policy.

The claimant understood the employer's policy and asked her daughter to leave the store with her son at various times. The claimant, however, did not take reasonable steps to make sure she did not violate the employer's policy by allowing her daughter to remain in the store for an extended time. The claimant not only allowed her daughter to stay in the store for seven hours during her shift, but she also allowed her grandson to go into the kitchen, push a cart around the store and put him on the counter when she checked out customers. Since her daughter was not watching her son, the claimant was basically babysitting her grandson while she worked. Instead of allowing her daughter to stay at the store, the claimant could have taken driven her daughter and grandson home during one of her breaks or she could have insisted that her daughter take her son to the local library. Since the claimant's daughter did not have a driver's license, the claimant knew or should have known what she would do if she came to work with the claimant and waited until the claimant was done working.

The claimant's failure to enforce the employer's policy regarding family members amounts to an intentional and substantial disregard of the employer's interest. The employer discharged the claimant for reasons constituting work-connected misconduct. As of October 24, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's November 12, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 24, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw