

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GLADYS F WATKINS

Claimant

APPEAL NO. 18A-UI-04376-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/18/18

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 4, 2018, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 2, 2018. Claimant participated personally and with witnesses Amber Baker, Harif Adina, Anthony Buttler, and Hurley Robinson. Employer participated by Blaine Miller and Brandon Krutzfield. Employer's Exhibits 1-8 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 19, 2018. Employer discharged claimant on March 20, 2018, because claimant kicked a customer after her son had chased after the customer on employer's grounds and thrown the customer to the ground.

Claimant worked as a cashier for employer. As a result of a mix up, a customer had not paid the proper amount for gas in a February, 2018 transaction. After claimant had attempted to get customer to even up on money owed, the customer insulted and intimidated claimant every time she came back into the store. When claimant informed employer of this customer causing problems on or around March 14, 2018, employer began the process to have the customer banned, and told claimant to leave the area when the customer was around or call the police if necessary.

This customer found out when claimant was getting off work and would come by the store near that hour to intimidate claimant. Claimant had to have others take her home so she wasn't followed by the customer. On March 19, 2018, the customer came by the store right when claimant was getting off work and started harassing claimant. Claimant had her son pick her up from work to avoid the other woman. When claimant's son came, claimant pointed out the

woman to her son. Her son then chased and caught the woman in the parking lot, and claimant came over and kicked the woman while she was lying on the ground.

Employer terminated claimant for violating its rules against physical violence.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct 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. Rule 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 Ct. 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning violence. Although the administrative law judge feels for claimant in this matter, employer was making steps to bar the customer from the store and employer had created a strategy for claimant to follow to minimize risk of poor outcomes. Claimant did not follow employer's recommended procedures.

The last incident, which brought about the discharge, constitutes misconduct because claimant had a plan of action to follow to stay clear of the customer, and she did not follow that plan. If claimant hadn't gone over to the customer after her son had thrown the customer to the ground and kicked the customer, it might have been a closer question. But given the actual occurrences, claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 4, 2018, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn