

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JODI M GROOTE**

Claimant

**APPEAL NO: 10A-UI-07533-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 04/04/10**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's May 12, 2010 decision (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for non disqualifying reasons. A telephone hearing was held on July 8, 2010. The claimant participated in the hearing. Jessica Leuders, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for work-connected misconduct?

**FINDINGS OF FACT:**

On September 23, 2009, the employer hired the claimant to work part time in the kitchen as a donut maker. The claimant understood she was hired because an employee was going on maternity leave and another employee was also going to be off work for a medical leave. The employer's policy informs employees that the employer considers an employee to have voluntarily quit if the employee does not call or report to work for two days.

The claimant left work early on February 18, 2010, because she did not feel well. The claimant called and left message for Leuders to let her know when she was next scheduled to work. When the claimant left on February 18, she had not seen the schedule and did not know when she was next scheduled to work. The claimant sent text messages to Leuders asking when she was scheduled to work after February 18. Leuders received text messages from the claimant but did not respond to them. Leuders did not consider a text message as a viable or legitimate way to communicate.

When the claimant called the store at various times, February 19 through 22, co-workers answered the phone. When the claimant asked if the schedule was up yet or when she was scheduled to work, she was told either that the schedule was not yet up or she needed to talk to

Leuders. When the claimant went to the store between February 19 and 22, Leuders was not working and the claimant did not see the schedule.

The employer scheduled the claimant to work 4 a.m. to 2 p.m. on February 22 and 23. The claimant did not report to work these days or call the employer because she did not know she was scheduled to work these days. Leuders no longer considered the claimant an employee when she did not report to work on February 22 and 23 and Leuders did not personally talk to her either day. Shortly after February 23, Leuders left the claimant a message that she had to return the store key or the employer would call the police so they could get the key from the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The facts establish the employer initiated the employment separation and discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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's testimony is deemed more credible than the employer's testimony. This conclusion is based on the fact the employer admitted the claimant sent her text messages during the days in questions, but does not remember what message the claimant sent her even though the employer had no problems remembering that she contacted the claimant on February 22 and the message she asserted she left on the claimant's answering machine. Since the claimant's testimony is deemed more credible, her version of events is reflected in the Findings of Fact.

While the employer may have had justifiable business reasons for ending the claimant's employment, the facts do not establish that the claimant committed work-connected misconduct. Instead, the evidence indicates the claimant did not know when she was next scheduled to work and contacted the employer by various means to learn when she was scheduled to work after February 18, 2010. The employer failed to inform the claimant she was scheduled to work on February 22 and 23 even though the claimant contacted the employer numerous times. The claimant is qualified to receive benefits as of April 4, 2010.

**DECISION:**

The representative's May 12, 2010 decision (reference 04) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of April 4, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/pjs