

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TINA M SPENCER**  
Claimant

**APPEAL NO. 13A-UI-03456-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 02/17/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's March 15, 2013 decision (reference 01) that concluded Tina Spencer (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 23, 2013. The claimant participated personally. The employer participated by Roy Dimmitt, Store Manager, and Terri Ashlock, Donut Maker.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on January 13, 2012, as a part-time store employee. The claimant signed for receipt of the employer's handbook on January 13, 2012. The employer issued the claimant written warnings on April 5, 24, July 17, September 4, November 20, 2012, for absences due to her medical condition. The employer notified the claimant that further infractions could result in termination from employment.

On February 14, 2013, the claimant was working a shift from 4:30 a.m. to 8:00 a.m. She was supposed to work again from 10 a.m. to 2:00 p.m. She was not feeling well and told the employer that she would complete her early shift but not return for the later one. The employer told the claimant she would be terminated if she did not return. The claimant returned to her work area upset. She threw kitchen utensils and pans around and used vulgar language in her frustration. The employer told the claimant to go home. The claimant argued with the employer, not wanting to be terminated. The employer terminated the claimant.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in establishing disqualifying job misconduct. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's absences were due to her medical condition and reported at least an hour prior to the start of her shift. The claimant's absences will not be considered misconduct.

In this case the employer was threatening the claimant with discharge if she did not work while she was sick. The employer placed the claimant in a stressful situation and the claimant used inappropriate language in the workplace. The language was not directed at anyone in particular. Isolated incidents of vulgar language where decorous language is not required is "unsatisfactory conduct" or a "mere peccadillo" rather than job misconduct. Budding v. Iowa

Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). The claimant's one-time use of bad language in the workplace after the employer told her she had to make food for customers while she was sick, does not rise to the level of misconduct. The employer did provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's March 15, 2013 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs