IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TAMMIE R POOLE
Claimant

CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES
Employer

APPEAL NO. 11A-UI-09985-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/19/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Tammie R. Poole (claimant) appealed a representative's July 18, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Casey's Marketing Company/Casey's General Stores (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2011. The claimant participated in the hearing and was represented by John Briebriesco, attorney at law. Sonja Carlson appeared on the employer's behalf. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 10, 2010. She worked full-time as a cashier and donut maker in the employer's Buffalo, Iowa store. Her last day of work was June 22, 2011.

When the claimant reported for work on June 22, she was summoned to the office of the store manager, Ms. Carlson. Ms. Carlson asked the claimant about a transaction on June 15 where a customer had received two pizzas but had not paid for them. The claimant explained that the customer had ordered a half taco/half cheese pizza, and then waited in the store about 45 minutes for the pizza to be ready. When the pizza was ready, it was discovered that the pizza was incorrect, that it had been made as half taco, half sausage. The customer was not willing to wait another 45 minutes for another pizza to be made. However, the pizza maker advised the claimant that there was another cheese pizza coming out of the oven. The claimant offered the customer that pizza in lieu of waiting for a corrected pizza, and since it was the

store's error, waived the payment for the pizzas, which the customer accepted. The giving of free pizza due to a store error was not an unusual resolution to such a situation in the store.

When the claimant made the explanation to Ms. Carlson, Ms. Carlson responded that she would not have handled the situation that way. The claimant asked if she was going to be fired, and Ms. Carlson responded that she had no choice. The claimant then left, but came back a few minutes later to deposit her keys and her uniforms on the counter.

The claimant had been given some prior warnings for issues different from that involved in the free pizza transaction; most recently she had been given a final warning on May 23, 2011 after the employer considered her to have been a no-call, no-show for a shift, even though the employer had been notified prior to the shift that the claimant had a doctor's appointment on that date and had indicated she need not come in prior to the shift. Because the employer considered there to have been a further disciplinary issue after the final warning, Ms. Carlson had decided to discharge the claimant, but the claimant did not wait to be given the discharge paperwork on June 22 before leaving.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that she quit because she left on June 22 without being given discharge paperwork. It is clear from the testimony, as well as the employer's corrective action statement dated June 20, 2011, that Ms. Carlson had made the decision to discharge the claimant prior to the June 22 meeting. The claimant did not have the option to continue in her employment had she not left. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 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 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 that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was the transaction on June 15 regarding the pizza after having received prior discipline, including a final warning. Under the circumstances of this case, the claimant's handling of the transaction on that date was not misconduct but was, at worst, an instance of ordinary negligence or a good-faith error in judgment or discretion. Therefore, there is no showing of a final or current incident of misconduct, and the employer has not met its burden to show disqualifying misconduct. Cosper, supra. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's July 18, 2011 decision (reference 01) is reversed. The claimant did not voluntarily quit; the employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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