

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY L BELIEU

Claimant

APPEAL NO. 13A-UI-05192-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/09/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's April 25, 2013 decision (reference 06) that concluded Mary Belieu (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 May 16, 2013. The claimant participated personally. The employer participated by Travis Trumper, Maintenance Coordinator Supervisor. The employer offered and Exhibit One was received into evidence.

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 November 1, 2012, and as of January 13, 2013, she was working as a full-time maintenance coordinator. The employer has a handbook but the employer did not give the claimant a copy.

In February 2013, the claimant complained about sexual comments at work. She was the only female in the workplace. Her supervisor called the claimant and questioned her about the comments while she was surrounded by her co-workers. The claimant told the supervisor that his questions were uncomfortable.

On April 8, 2013, the supervisor gave the claimant a written warning after a district manager complained about her. The supervisor believed the district manager and not the claimant. Also on April 8, 2013, the supervisor issued the claimant a written warning for not entering a call on the computer. The employer notified the claimant that further infractions could result in termination from employment.

On April 9, 2013, the supervisor called the claimant in and issued her a two-day suspension for failure to enter a call properly on the computer. The claimant asked the supervisor if she could have an open conversation about the warning. The supervisor did not remember saying the

claimant could speak freely. The claimant explained her thoughts to the supervisor. The supervisor decided to terminate the claimant for arguing her side of things. He told the claimant that she should have left five minutes earlier so he did not have to listen to her arguing. Then he terminated her.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred on April 9, 2013. The employer

terminated the claimant for taking five minutes to explain her side of events after receiving a two-day suspension. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's April 25, 2013 decision (reference 06) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css