

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSE M BAILEY
Claimant

APPEAL NO: 13A-UI-09164-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 07/14/13
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 2, 2013, reference 01, that held the claimant was not discharged for misconduct on July 8, 2013, and benefits are allowed. A telephone hearing was held on September 12, 2013. The claimant participated. Nicole Collins, Area Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant was hired on May 17, 2012, and last worked for the employer as a full-time store employee (pizza maker/cashier) on July 7, 2013. She received the employer policies in an employee handbook.

During the course of employment the employer issued claimant some written (disciplinary) corrective action statements for policy violation and unacceptable behavior. The last warning occurred on February 25, 2013. It does not state this is a final warning nor that claimant's job is in jeopardy.

On July 3, 2013 claimant was training a new hire that included the process of handling meat. She told co-worker Julie not to handle the meat because she wanted to demonstrate it with the trainee. When claimant saw Julie with two bags of meat she gently took it from her hands. Julie started yelling at her and they became exchanged words loud enough that another employee asked them to calm down.

The store manager considered claimant acted in an inappropriate manner on July 3 and discharged her effective July 8. The store manager did not participate in this hearing and the employer witness was not involved in the employment termination decision.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment effective July 8, 2013. The employer must establish the most recent incident as misconduct to deny benefits.

The employer witness did discharge claimant and did not witness the July 3 incident. She had not consulted with the store manager and testified basis of the employer documents. Claimant might have raised her voice in responding to the co-worker on July 3 but there is nothing extra-ordinary about her behavior that establishes misconduct. Job disqualifying misconduct is not established.

DECISION:

The department decision dated August 2, 2013, reference 01, is affirmed. The claimant was not discharged for a current act of misconduct on July 7, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css