

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARY GOODSON-OAKLEY
Claimant

APPEAL NO. 07A-UI-01241-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMPBELL'S NUTRITION CENTERS INC
Employer

**OC: 12/31/06 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Campbell's Nutrition Centers, Inc. (employer) appealed a representative's January 31, 2007 decision (reference 02) that concluded Mary Goodson-Oakley (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2007. The claimant participated in the hearing. Melanie Gibb appeared on the employer's behalf and presented testimony from one other witness, Diane Lahodny. While both parties had submitted a substantial volume of documentation as potential exhibits, none of the documentation was demonstrated to assist in determining the specific facts of what did or did not occur at the point of separation beyond the sworn testimony and therefore was excluded as irrelevant, immaterial, or unduly repetitious. Iowa Code § 17A.14(1). 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 the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 27, 2002. She worked full time (defined for her to be 32 hours per week) as a cashier/sales clerk. Her last day of work was December 30, 2006. The employer discharged her on January 2, 2007. The reason asserted for the discharge was leaving work early against the employer's wishes on December 30.

The employer had made various accommodations for the claimant's work schedule over the years, and felt that the claimant was not reciprocating with effort or appreciation. While the employer had concerns that the claimant was actually not even fulfilling the expectation that she work at least 32 hours per week, the employer never gave the claimant any kind of formal warning that she was not working sufficient hours and that the employer felt she was taking undue advantage.

Saturday, December 30, the claimant was scheduled to work from 9:00 a.m. to 5:00 p.m. It was a busy day in the store, and some other employees that normally worked that day were absent, so the store was at least somewhat short-staffed. At approximately 3:00 p.m. the claimant approached Ms. Gibb, the assistant manager, and indicated that she needed to leave work at that time because her best friend who was terminally ill was being moved from the hospital to a hospice. The claimant had told the medical staff that she worked until 5:00 p.m. so it would be best if the move took place after 5:00 p.m., but the ambulance transport crew had arrived early so the transport was underway. The claimant had medical power of attorney for the friend, and the hospice staff was unable to reach the friend's daughter, who also had medical power of attorney, so they contacted the claimant so that the necessary paperwork could be completed.

When the claimant informed Ms. Gibb she needed to leave, Ms. Gibbs became upset, as the claimant had in the prior year taken significant time off due to terminal illness of a family member, and Ms. Gibb felt it improper that the claimant now take time off due to illness of a friend. She told the claimant that if the claimant left at that time due to the friend, that "was it," meaning that she would end the claimant's employment. Given the friend's need to have the medical paperwork completed, the claimant felt she had no choice and left. When she attempted to return to work on January 2 Ms. Gibb clarified that the claimant's employment indeed was terminated.

REASONING AND CONCLUSIONS OF LAW:

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). The question is not whether the employer was right 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 matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her leaving work against the employer's wishes on December 30, 2006. While the employer may have had some valid concerns with the claimant's attention to work prior to that day, resolution of the details of those issues is not determinative of whether the claimant's discharge was for disqualifying misconduct; ultimately, it is only the fact of the claimant's leaving work two hours early on December 30 against the employer's wishes and her reasonableness of doing so that are relevant to that determination. Leaving work despite an employer's denial of permission to leave can be misconduct, but beyond the reasonableness of the employer's directive or instruction, the claimant's reason for noncompliance must also be considered in determining whether it was misconduct. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985); Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App. 1982). Under the circumstances of this case, the claimant's decision to leave because of having the needed medical power of attorney even though contrary to the employer's denial of approval for her to leave was in good faith and for a reasonable cause. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's January 31, 2007 decision (reference 02) is affirmed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw