

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN L THOMAS

Claimant

APPEAL NO: 18A-UI-11421-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 10/21/18

Claimant: Appellant (1)

Iowa Code § 96.6 (2) – Timeliness of Appeal

Iowa Code § 96.5 (2)a - Discharge

STATEMENT OF THE CASE:

Susan L. Thomas, the claimant filed an appeal from a representative's unemployment insurance decision dated November 7, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work on October 23, 2018 for insubordination in connection with her work. This appeal was due to be received by the appeal section or postmarked by November 17, 2018. The appeal was not filed until November 26, 2018 which is beyond the date on the hearing notice. After due notice was provided, a telephone hearing was held on December 7, 2018. Claimant participated and testified on her own behalf. Employer participated by Ms. Anita Crum, Store Manager. Employer's Exhibits A through E were admitted into the hearing record.

ISSUES:

The first issue is whether the claimant filed a timely appeal.

The second issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of job insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: the disqualification decision was mailed to the claimant's last known address of record on November 7, 2018. The claimant did not receive the decision at her address of record. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by November 17, 2018. The appeal was not filed until November 26, 2018, which is after the date notice on the disqualification decision. When Ms. Thomas had not received a decision on her claim within the expected time, she contacted Iowa Workforce Development and was informed on November 26, 2018 of the disqualification decision, the claimant filed an appeal that day. The claimant has established a good cause reason for filing beyond the statutory time limit. Her appeal is considered timely.

Susan Thomas was employed by Casey's Marketing Company from October 11, 2017 until October 23, 2018, when she was discharged from employment. Ms. Thomas worked as a full-time store employee and was paid by the hour. The claimant's immediate supervisor was Anita Crum, the store manager.

Ms. Thomas was discharged from her work with Casey's Marketing Company because Ms. Thomas had engaged in disruptive conduct at work on two occasions between October 4, 2018 and October 21, 2018.

On October 4, 2018, Ms. Thomas was working as a cashier and had not noticed that a number of customers were beginning to line up at the cash register for service. When a kitchen employee attempted to bring Ms. Thomas' attention to the waiting customers, Ms. Thomas became agitated and in a raised voice shouted "I am only one person, how am I supposed to do all of this?" The claimant's loud response heard by customers waiting to be served and by other store employees. Customers made complaints to management about Ms. Thomas' behavior that day. Ms. Thomas was issued a written corrective action on October 11, 2018 for her conduct because it was a violation of the company's customer service principals. Ms. Thomas was warned that further violations could result in her termination from employment.

The final incident that resulted in Ms. Thomas' discharge took place on October 21, 2018. On that date, Ms. Thomas loudly disagreed with the kitchen manager, when the kitchen manager verified that it was necessary that Ms. Thomas and another worker complete their side work before Ms. Thomas and another worker ended their shifts. The claimant as aware that side work had to be completed before her shift ended, but Ms. Thomas felt that she had already performed "her share" of the duties. When the claimant was told she needed to complete the rest of the tasks, Ms. Thomas yelled "I don't have to listen to you! You are not my boss!" The claimant's statements and her demeanor were witnessed by other employees who were present as well as by a number of the company customers who were at the store at the time.

Ms. Thomas was required to follow the reasonable work directives of any employee of the Casey's Marketing Company that had been given management authority, whether the management authority was directly over Ms. Thomas or over another department at the facility. Ms. Crum, the store manager had trained employees on the rule and it was commonly known by employees of the store.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes work-connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

The written warning given to Ms. Thomas weighs heavily towards a finding of intentional conduct. Misconduct can be established when an employee who has been specifically warned subsequently disobeys a reasonable instruction that had been given by the employer. *Meyer v. Iowa Department of Job Service*, 373 N.W.2d 507, (Iowa 1985). Repeated failure to follow an employer's reasonable work instructions is misconduct in connection with the work. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

In this case, the claimant was an hourly employee and worked for Casey's Marketing Company since the store had opened. The claimant was aware because of policy and common practice that employees are expected to follow reasonable work directives given to them, even if the instruction is given by a manager of a different department. Ms. Thomas had been specifically warned on October 11, 2018 not to be disruptive in the future and to follow the company's customer service expectations. Ms. Thomas knew or should have known that her loud questioning of a management directive challenging the management authority of the company's kitchen manager on October 21, 2018 would be another violation of company policy and jeopardize her employment. Ms. Thomas chose to argue rather than comply. Accordingly, the claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated November 7, 2018, reference 01 is affirmed. The claimant was discharged for work-connected misconduct. The claimant is disqualified for unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn