

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYCE R ONEAL

Claimant

APPEAL NO. 12A-UI-01285-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/25/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's decision dated January 25, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 28, 2012. Claimant participated personally. Participating as witnesses for the employer were Ms. Bonny Jo Anderson, a friend; Dick Cohonn, the claimant's father; and Vicki Cohonn, the claimant's mother. Employer participated by Ms. Elizibeth Smith, Store Manager.

ISSUE:

The issue in this matter is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Joyce Oneal was employed by Casey's Marketing Company from January 29, 2011 until December 19, 2011 when she was discharged from employment. Ms. Oneal worked as a part-time pizza maker and was paid by the hour. Her immediate supervisor was Elizibeth Smith.

A decision was made to terminate Ms. Oneal when an unidentified patron complained about the claimant's demeanor and the time that it took Ms. Oneal to prepare a pizza on December 17, 2011. Ms. Oneal had refused to drop the price of the pizza because the patron had to wait. Later when the patron observed Ms. Oneal spitting on the ground outside the facility, the patron concluded that Ms. Oneal might have been symbolizing "spitting into the pizza." Because another unidentified patron agreed with the complaining patron, a decision was made to terminate Ms. Oneal from her employment. The claimant had been previously placed on notice about her work demeanor by the company.

The claimant specifically and categorically denies the employer's allegations. The claimant agrees that there was a delay in making the pizza in question on the night of December 17, 2011 but denies being abrasive or abrupt or denies conveying any negative messages to the patron in any manner.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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.

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 issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). What constitutes conduct justifying termination of an employee and what misconduct warrants the denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988).

Although hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. In this matter the employer relies solely on hearsay evidence in support of its position that the claimant intentionally disregarded the employer's interests or standards of behavior. In contrast the claimant appeared personally and provided sworn testimony testifying with specificity denying the employer's allegations and explaining the circumstances of the customer dissatisfaction that took place on the night of December 17, 2011.

While the decision to terminate Ms. Oneal may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes that the anonymous complaints that are hearsay in nature are not sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 25, 2012, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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