

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI L TRIPSES

Claimant

APPEAL 15A-UI-10777-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING CO

Employer

OC: 08/30/15

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 16, 2015, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on October 15, 2015. Claimant participated personally and was represented by attorney, Thomas Maxwell. Employer participated through district manager, Lucy Thomas, and area supervisor, Amy Meyers, and was represented by Craig Cree with Talx. Employer's Exhibits A, B, C, E, F, G, and H were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store manager from January 5, 2004 and was separated from employment on August 31, 2015, when she was terminated.

At the outset of her employment, claimant was made aware of employer's policy on prohibited harassment. The policy prohibits "sexually or improperly oriented statements that have the purpose or effect of creating a hostile work environment." The policy directs employees who believe they have been the subject of such conduct to report the concerns to their supervisor or the human resources department. Claimant was also made aware of a "non-fraternization" policy which prohibits employees having personal relationships from being employed in a direct supervisor/subordinate situation.

During her employment, claimant became friends with assistant manager, Kathleen Peiffer. The two worked together for approximately two years. However, they did not regularly socialize outside of work. Peiffer had previously been in abusive relationships and acted as a support system for claimant, who was currently in an abusive relationship. Over the course of this friendship, claimant disclosed to Peiffer she suspected her significant other of cheating on her because she found semen in his underwear. After being asked, claimant also told Peiffer that

the medication she was on during her pregnancy was to treat a sexually transmitted disease. During her employment, Peiffer never told claimant that these conversations made her uncomfortable or reported them to a supervisor or human resources.

Around the end of July 2015, claimant had a conversation with employee, Cody Goodwin about methamphetamine. Claimant had worked with Goodwin for a little under one year, and Goodwin had previously disclosed to claimant that he had experience with the drug. Claimant asked Goodwin several questions, including whether methamphetamine would cause her significant other to excessively masturbate and whether her unborn child would be harmed if she had sexual relations with her significant other while he was using the drug. Goodwin never told claimant the conversation made him feel uncomfortable and he did not report the conversation to a supervisor or the human resources department.

Both Goodwin and Peiffer received a copy of employer's policy prohibiting harassment.

Peiffer's employment was involuntarily ended on August 12, 2015.

On August 21, 2015, employer's human resource department sent district manager, Lucy Thomas an email with a letter attached. The letter was from Peiffer, who had several complaints about claimant. Of relevance here, Peiffer reported the conversations she had with claimant about her significant other cheating on her and the medication she was taking during her pregnancy.

Thomas and area supervisor Amy Myers investigated the report by interviewing employees Glen Mayeno and Cody Goodwin. Mayeno reported that he never had a conversation of a sexual nature with claimant. Goodwin reported the conversation he had with claimant and made a written statement summarizing the same. The written statement did not note that Goodwin was uncomfortable with or offended by the conversation. Employer did not contact Peiffer to gather further information. Claimant also gave a written statement admitting to the conduct.

Based on the results of its investigation, employer terminated claimant on August 31, 2015, for violating its policies against harassment, non-fraternization, honesty and integrity, and employee conduct.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Here, claimant was in a difficult personal situation and was seeking support from her co-workers. Although not entirely professional, claimant's behavior does not rise to the level of sexual harassment. Nothing indicates the conversations were unwelcome or offensive at the time they occurred or that the work environment was hostile. Both Peiffer and Goodwin were required by employer's harassment policy to report harassing behavior. Neither did so during their employment and Goodwin did not report the conduct was offensive or harassing in his

written statement. Peiffer only reported the information to retaliate against claimant for her loss of employment. Additionally, claimant did not violate the non-fraternization policy by developing a friendship with Peiffer that is not uncharacteristic of relationships that most people form with the individuals with whom they work for a period of years.

As stated above, claimant's conduct may have been unprofessional. However, she was never previously warned about engaging in similar conduct. Employer failed to establish claimant was terminated for conduct that was with such a wrongful intent that it disqualifies her from receiving unemployment benefits.

DECISION:

The September 16, 2015, (reference 01) unemployment insurance decision is reversed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Decision Dated and Mailed

cal/pjs