

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIZABETH A HALSEY
Claimant

APPEAL NO. 11A-UI-06099-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 04/11/10
Claimant: Appellant (2)**

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 26, 2011, reference 06, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 7, 2011, in Davenport, Iowa. Claimant participated. Employer notified the agency in writing that it would not be participating in the hearing. The record consists of the testimony of Elizabeth Halsey and claimant's exhibits A-G.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as a full-time assistant manager for the employer's convenience store located at Lake Canyada. Her date of hire was February 16, 2011. On February 21, 2011, the claimant sustained a work-related injury. She was off work from February 26, 2011, through March 7, 2011. She received temporary total disability benefits from the employer for the period of March 1, 2011, through March 7, 2011. The claimant did not receive temporary total disability benefits from February 26, 2011, through February 28, 2011, as there is a three-day waiting period under Iowa law for the receipt of temporary total disability benefits. The claimant believes that she could have worked those days even though she had a twenty-pound lifting restriction. The claimant's last day of work was April 4, 2011. She was terminated on April 4, 2011.

The claimant was told she was being terminated for being rude to customers. The claimant denied ever being rude to customers. She believes she was terminated because she filed a claim for worker's compensation benefits.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The employer did not participate in the hearing and offered no testimony on why the claimant was terminated. The claimant was told she was terminated because she was rude to customers. The claimant denied that she was rude to customers. The employer had the burden of proof to establish misconduct. Since there is no evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated April 26, 2011, reference 06, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css