

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI L THEIN
Claimant

APPEAL NO. 12A-UI-12248-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/02/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 26, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 6, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Heather Beving participated in the hearing on behalf of the employer with a witness, Nathan Bell.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a restaurant worker from November 23, 2010, to August 30, 2012.

On August 28, 2012, the assistant manager brought the claimant in to issue a written warning based on the claimant's use of the business telephone to call a coworker regarding a personal matter. The claimant refused to sign the warning and told the assistant manager that it was a joke. After the assistant manager read the warning to the claimant, she again declined to sign the warning. When she went back out to the floor, she told coworkers about getting written up and remarked that the place was a joke.

The assistant manager overheard the claimant and told her she was being sent home. The assistant manager was outside washing windows when the claimant exited the store. She told the assistant manager that she was a good person and she did not know what the assistant manager's problem was with her.

The assistant manager reported to the manager that the claimant had used profanity toward him during the conversation and called him a derogatory name. The manager discharged the claimant on August 30, 2012, for violating the employer's anti-harassment policy and appropriate behavior policy.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The crux of this case is conflicting evidence from the claimant and assistant manager. The assistant manager testified the claimant cursed and directed a derogatory name to him. The claimant denied it. No other witnesses testified to corroborate the testimony. While the claimant had a motive for minimizing her behavior, the claimant also presented testimony showing the assistant manager wanted to get rid of her. Since the employer has the burden of proof, I conclude it has not met the burden of showing disqualifying misconduct. The claimant's refusal to sign a warning could provide grounds for establishing work-connected misconduct, but that was not what caused the employer to discharge the claimant. The claimant challenged the assistant manager's warning. But the courts have emphasized that "employees are not expected to be entirely docile and well-mannered at all times." Carpenter v. Iowa Department of Job Service, 401 N.W.2d 242, 246 (Iowa Ct. App. 1986). While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated September 26, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs