**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**IAN M YANKEY**
Claimant

**CASEY'S MARKETING COMPANY**
Employer

**APPEAL NO: 13A-UI-07192-DT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 05/19/13**
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's June 14, 2013 decision (reference 01) that concluded Ian M. Yankey (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 22, 2013. The claimant participated in the hearing. Teresa Palomino appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on April 18, 2011. He worked full time as second assistant manager at the employer's Sloan, Iowa store. His last day of work was May 12, 2013.

On May 13 the claimant had agreed to cover a shift from 2:00 p.m. to 11:00 p.m. On the morning of May 13 he came into the store as a customer and was chastised by the first assistant manager for not taking care of some cans the prior day, so the claimant went and took care of that before leaving after his customer transaction. He came back to the store shortly before the start of the 2:00 p.m. shift.

At that time the claimant noticed that there was trash on the grounds and that the garbage cans had not been changed. He began to state to the employees on duty that this was not acceptable. The first assistant manager then began yelling at and berating the claimant in front

of the other employees and customers. After about five minutes the claimant stated, "I'm not doing this right now," and left the store to calm down. The employer provided second-hand testimony to the effect that the claimant had before leaving said, "I'm done with this f - - - ing place." The claimant denied making this or any similar statement.

Immediately after the claimant left the store he sent a text message to Palomino, the store manager, who was on vacation that day for the birth of her grandchild. In the text the claimant expressed that he was tired of the first assistant manager's attitude, but he did not make any indication that he was leaving the employment. Palomino responded that she was on vacation and occupied and could not deal with the claimant's situation at that time, and that he should just do what he was told.

After calming down, as much as 45 minutes later the claimant attempted to return to the store and work his shift. However, the first assistant manager refused to allow the claimant to return to his shift, telling him that he had quit. The claimant made further attempts to return to work by contacting Palomino as well as the area supervisor on May 14. Because Palomino accepted as true the report that the claimant had said that he "was done with this . . . place," she agreed that the claimant had quit and declined to allow him to return to the employment.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit by making statements to that effect and then leaving the store rather than staying and working his shift.

There are situations in which walking off the job rather than staying and working as assigned can be deemed to be a voluntary quit. 871 IAC 24.25(27). Statements made when leaving that are consistent with showing an intent to end the employment would reinforce that interpretation. On the other hand, if an employee leaves work but makes statements that make it clear that the employee is leaving for a purpose other than to quit, the resulting separation is not a quit. *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). This case is more ambiguous in that the claimant did not make it clear when he left that he was only leaving to calm down and that he intended to return. The employer relies on second-hand statements that the claimant did say things when leaving which would be consistent with an intent to quit; however, the claimant denies making such statements. Without the information regarding the statements alleged to have been made by the claimant being provided first-hand, the administrative law judge is unable to ascertain whether those persons who reported it to Palomino might have been mistaken, they are credible, or whether the Palomino might have misinterpreted or misunderstood aspects of the reports. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes

that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant made the statements evidencing an intent to quit.

That leaves the ambiguous situation of the claimant admittedly leaving the store for a period of time without making a clear statement of his intent to either return or not. The claimant, however, took action to resolve the ambiguity by seeking to return to his shift within at least 45 minutes of the incident which prompted him to leave the store. Without persuasive evidence that the claimant did make statements indicating an intent to quit before leaving the store at about 2:00 p.m., the administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21), *Peck*, supra.

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was his dispute with the first assistant manager and his departure from the scene for a period of time after the dispute. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 14, 2013 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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