

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY M KENWORTHY
Claimant

APPEAL NO: 11A-UI-07867-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 03/07/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 9, 2011 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant participated in the hearing. Serena Warren, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working as a full-time donut maker in early January 2011. Although the claimant indicated she was available to work any shift, the store manager, at that time, hired her to work a set schedule. The claimant worked 3 a.m. to 9 a.m. on Monday, Tuesday, and Thursday. She worked until 10 a.m. on Wednesday, and until the truck was unloaded on Friday. The claimant also agreed to work every other Saturday, but was not scheduled to work on Sundays.

After Warren became the manager, the claimant told her she had been hired to work a set schedule, but Warren scheduled her to work afternoon shifts and Sundays. The claimant was unable to work afternoons because she took care of her grandchildren in the afternoon.

During the last month of her employment, the claimant experienced personal issues that prevented her from working all her scheduled shifts. With the exception of the dates mentioned below, the claimant made arrangements for another employee to cover her shift when she was unable to work.

The claimant did not call or report to work on April 10, a Sunday. The schedule for April 10 was not posted until April 9, Saturday, and the claimant had not worked on Saturday. The claimant

did not find a replacement for this shift because she did not know she had been scheduled to work on April 10. The claimant reminded Warren she had been hired to work a set schedule. Since the claimant's application indicated she could work all shifts, Warren did not believe the employer was obligated to schedule the claimant to work the shifts she agreed to work when she accepted employment. The claimant did not work on April 13 when she was scheduled to work the lunch shift because she took care of her grandchildren in the afternoon. On April 23, the claimant left work early because she did not feel well. Warren gave the claimant permission to leave work early. On April 28, the claimant left work at 9 a.m. for an appointment. Warren gave the claimant permission to leave at 9 a.m. On April 30, the claimant was 30 minutes late for work because her tires had been slashed and she had to get new tires or fix her tires before she could get to work. The last day the claimant worked was May 5.

On May 9, the claimant called in sick. The employer called the claimant on May 10 to find out if she was going to be at work. Warren understood that other employees would no longer cover for the claimant when she was unable to work. Since the claimant reported to work at 3 a.m. to prepare food for the day, it was important that she was a reliable employee. After the claimant could not give the employer her assurance that she would be at work, the employer indicated the claimant could either resign so she could be rehired at a later date or the employer would discharge her. The claimant told the employer she would resign.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the claimant voluntarily quit her employment. Instead, she understood that if she did not resign, the employer would discharge her for ongoing attendance issues.

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 (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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

When the claimant had the choice of resigning or being discharged, the employer initiated the employment separation. The facts indicate the employer gave the claimant the choice of resigning or being discharged. Under the facts of this case, the employer discharged the claimant. The claimant established that when she knew she was scheduled to work, she either found a replacement or notified the employer that she was unable to work as scheduled. The evidence does not establish the claimant intentionally failed to work as scheduled. She had

personal issues and believed that when she found someone to cover her shift, her absence was not a problem.

Warren was undoubtedly frustrated about the claimant's attendance. The employer relied a great deal on the employee who reported to work at 3 a.m. to prepare food for the day. As of May 10, the employer did not trust the claimant to be a dependable and reliable employee. After the claimant could not honestly tell the employer she would not miss more work, the employer decided to end the claimant's employment for compelling and justifiable business reasons. The evidence does not establish that the claimant committed work-connected misconduct. As of May 15, 2011, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers and will not be charged during the claimant's current benefit year.

DECISION:

The representative's June 9, 2011 determination (reference 03) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer discharged her for business reasons that do not constitute work-connected misconduct. As of May 15, 2011, the claimant is qualified to receive benefits. The employer's account will not be charged during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw