

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATALIA M ALANIZ
Claimant

APPEAL NO. 17A-UI-00664-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12/18/16
Claimant: Respondent (2)

Iowa Code § 96.5(2)a -- Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company, the employer, filed a timely appeal from a representative's decision dated January 13, 2017, reference 02, which held the claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on February 9, 2017. Claimant participated. Participating as a witness for the claimant was Ms. Connie Jo Foley. The employer participated by Ms. Kathrine Schmidt, Store Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with her work.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The claimant was employed by Casey's Marketing Company beginning in October 2013 until December 21, 2016, when she was discharged by the employer. Ms. Alaniz was employed as a full-time cook/cashier and was paid by the hour. Her immediate supervisor was Kathrine Schmidt. Ms. Alaniz was discharged after she left the employer's premises on December 20, 2016, and failed to return to work that afternoon as directed.

On December 20, 2016, the claimant was assisting another worker in preparing pizzas, when the cashier on duty, asked Ms. Alaniz to exchange a propane tank for a customer. A disagreement then took place between Ms. Alaniz and the other worker about the request. The claimant was busy at the time and also felt the other worker had often asked others to do her work. When Ms. Alaniz would not assist, the other worker reported to the store manager that Ms. Alaniz had stated, "Do it your fucking self." When confronted about the matter by the store manager, Ms. Alaniz denied making the statement that had been reported and responded that she had only made the statement, "This is what I don't like about her being back at work."

Because the other worker had been the sole cashier and had numerous customers waiting in line at the time, Ms. Schmidt considered the claimant's refusal to help the other worker to be without justification.

Ms. Alaniz did not agree with the store manager's assessment of her fault in the dispute, and also disagreed with the other areas of concerns that the manager was attempting to address with Ms. Alaniz at that time. The claimant's disagreement her manager escalated and

culminated in Ms. Schmidt stating, "You should leave and not come back." Ms. Alaniz did not follow that directive stating that she needed her job and intended to stay. The meeting between Ms. Alaniz and the store manager ended with the store manager instructing Ms. Alaniz to leave until the 1:00 p.m. truck arrived, and then return and you can help unload it. Ms. Schmidt left the area and returned to her office, Ms. Alaniz continued working.

After considering for 10 minutes, Ms. Alaniz then concluded that she had been "discharged," clocked out, left the store, and did not return that day.

Ms. Schmidt called her district manager and reviewed what had taken place that morning. The district manager instructed Ms. Schmidt to discharge Ms. Alaniz for her conduct, but the claimant did not return to work as instructed. The claimant was notified of her discharged on December 21, 2016.

It is the claimant's position that she did not quit her employment on December 20, 2016, even though she believed that the store manager's public reprimand that day was inappropriate. The claimant considered herself "discharged" because the store manager had directed her to go home and not return and that the manager's later statement to return to work at 1:00 p.m. was of no consequence because she considered herself discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant chose to voluntarily quit employment or whether the claimant was discharged by the employer. Based upon the evidence in the record and the testimony of the witnesses, the administrative law judge concludes that the claimant was discharged from employment. The second question before the administrative law judge is whether the evidence in the record establishes misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits; it does.

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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In the case at hand, the claimant was discharged based upon a series of incidents that had taken place at work on December 20, 2016. The facility was short-staffed that day and the only cashier asked for the claimant's assistance in exchanging a propane tank outside. The claimant's refusal to help the other worker and the statement she made to the other worker while refusing resulted in a complaint to the store manager. When the store manager addressed the complaint and other employment concerns with Ms. Alaniz, the claimant argued with her supervisor about where the conversation was taking place or who was there, instead of the concerns that the store manager was trying to bring to her attention.

In an effort to end the confrontation that had escalated to a shouting match, the store manager first instructed the claimant to go home and not return. When the claimant pleaded that she wanted to keep her job, the store manager then modified the directive and told the claimant to leave and go home, but to return at 1:00 p.m. that afternoon to continue working by helping to unload the delivery truck that was expected. The claimant again stated she did not want to leave and the manager left the area believing that the claimant was staying, as the confrontation subsided. Ms. Alaniz continued to work for approximately 10 minutes longer. During this time, the claimant decided that the employer had earlier discharged her. Ms. Alaniz punched out, left, and did not return.

Because the claimant had been instructed to go home for a period of time and then return to work, the management decided that the claimant would be allowed to continue working if she returned that afternoon and would be discharged if she did not.

The administrative law judge concludes based upon the evidence in the record that the claimant knew or should have known based upon the directive that she return to work at 1:00 p.m. that afternoon to help other employees with work, that she had not been discharged from employment. The manager's earlier directive for her to go home and not return had clearly been modified by the employer's statement to the claimant, establishing the employer expected the claimant to return to work that day and the employment relationship had not ended.

The administrative law judge concludes that the manager's first statement to the claimant about going home was made to stop the claimant's argumentative behavior. When the claimant expressed her desire to keep her job, the manager then confirmed to the claimant that she was not discharged, but expected to work that afternoon at 1:00 p.m. when a truck arrived. The claimant was discharged when she continued her pattern of failing to follow reasonable and work-related directives by leaving and not returning as instructed.

An employer has a right to expect decency and civility from its employees and employee's use of confrontational and disrespectful demeanor towards the employer may be recognized as

misconduct disqualifying the employee from receipt of unemployment insurance benefits. The claimant's conduct in arguing with the her supervisor regarding work-related directives served to undermine the store manager's authority. The employer's instructions for the claimant to return to work at 1:00 p.m. that afternoon was reasonable under the circumstances and work-related. Because the claimant's failure to follow the reasonable work directive constituted misconduct in connection with the work, the claimant is disqualified from unemployment insurance benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. The administrative record reflects the claimant has received unemployment benefits in the amount of \$1,200.00 since filing a claim with the effective date December 18, 2016 for the week ending dates January 7, 2017 through February 4, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's decision dated January 13, 2017, reference 02, is reversed. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. Claimant has been overpaid unemployment insurance benefits in the amount of \$1,200.00 and is liable to repay this amount. The employer's account shall not be charged based upon the employer's participation in the fact-finding interview.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs