IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

Donald L. Lindquist Claimant **Casey's Marketing Company** Employer	**DIA APPEAL NO. 22IWDU00124** **IWD APPEAL NO. 22A-UI-09551** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 5/02/2021** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer Casey's Marketing Company, filed an appeal from the April 6, 2022 (reference 02) unemployment insurance decision that allowed benefits to Claimant Donald Lindquist based upon a determination he had not been discharged for "willful or deliberate conduct." After proper notice, a telephone hearing commenced on June 27, 2022. Employer appeared and testified through its representative Michelle Benton. Claimant failed to appear despite proper notice. Consequently, the hearing was held in the absence of Claimant.

ISSUE(S):

- Whether the separation was a layoff, discharge for misconduct, or voluntary quit without good cause.
- Whether the appeal is timely.
- Whether benefits should be repaid by the claimant due to the employer's participation in the fact finding.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant Donald Lindquist first started working for Casey's in July of 2019. By February and March of 2022, he was working as a food service leader (kitchen manager) at the Casey's in Parkview, Iowa. Sometime in February, District Manager Michelle Benton had to come to the store because there was not currently a store manager there. During her interaction with Claimant, Benton noticed that he seemed to be "harsh" and she told him he needed to be nicer to people.

Then, on March 8, Benton was again in the Parkview Store as part of her regular duties. However, Claimant became very combative and disrespectful to her. In particular, he told her that she should not even be in the store because it was disruptive and he did not have time for her. Benton at this time gave him a verbal warning and told her that they could not tolerate this type of behavior in the workplace. Claimant responded by simply walking away from her.

The following day, another store manager had come to the Parkview store because it still did not have its own manager and because she was helping out the store assistant. At some point, she told Claimant that he should put some more sub sandwiches in the case. The Claimant replied by saying he would not do that because she was not his boss. He then called her a "fucking cunt."

The visiting store manager reported this incident to Benton later that day. On the following day, Benton went to the store to speak to Claimant about his behavior. Claimant initially told Benton that she was a disruption and that she should not even be there. However, he did admit that he had called the visiting manager the disparaging and profane vulgarities. But, he thought his behavior was appropriate and he kept debating Benton about it. Casey's has an employee manual that is called the Team Member handbook, that Claimant would have received upon hire. This policy prohibits creating a hostile work environment and engaging in unprofessional behavior. Citing these provisions, Benton then terminated Claimant on the spot, telling him that Casey's cannot allow this type of behavior.

Based on her experiences with him, Benton observed that Claimant can work well with men on the job. However, she has seen personally that he does not know how to appropriately work with women. In particular, if a woman coworker or superior asked or told him to do something, he would respond with negative energy and combativeness.

Following a fact finding interview, IWD determined Claimant was eligible to receive unemployment benefits because there was no "willful or deliberate conduct." The decision stated that

> THIS DECISION BECOMES FINAL UNLESS AN APPEAL IS POSTMARKED BY 04/16/22, OR RECEIVED BY IOWA WORKFORCE DEVELOPMENT APPEAL SECTION BY THAT DATE.

Employer's appeal request was electronically submitted to IWD on April 15, 2022.

REASONING AND CONCLUSIONS OF LAW:

As an initial matter, this appeal was timely taken. *See* Iowa Code § 96.6(2) (providing for a ten-day appeal period). The IWD representative's decision was issued on April 6, 2022, while Employer's appeal request came on April 15, 2022.

Next, for the reasons that follow, the administrative law judge concludes the IWD representative's decision is incorrect as to the issue of eligibility for benefits. Claimant was discharged for misconduct. Claimant was thus discharged from employment for a disqualifying reason.

Iowa Code § 96.5(2)a provides:

> An individual shall be disqualified for benefits . . .
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. . . .
>
> 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).

Iowa Admin. Code r.871-24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 Bd.*, 616 N.W.2d 661 (Iowa 2000) (fact that claimant, who was a

snowplower, had two accidents involving utility lines within three days did not constitute misconduct such as would disqualify claimant from receiving unemployment benefits; there was no evidence that claimant intentionally or deliberately damaged utility lines or violated any traffic laws, and there was uncontroverted evidence that accidents were beyond claimant's control).

"The use of profanity or offensive language in a confrontational, disrespectful, or namecalling context, may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made. The question of whether the use of improper language in the workplace is misconduct is nearly always a fact question. It must be considered with other relevant factors, including the context in which it is said, and the general work environment." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). Vulgar language in front of customers can constitute misconduct, *Zeches v. Iowa Dep't of Job Serv.*, 333 N.W.2d 735, 736 (Iowa Ct. App. 1983), as well as vulgarities accompanied with a refusal to obey supervisors. *Warrell v. Iowa Dep't of Job Serv.*, 356 N.W.2d 587, 589 (Iowa Ct. App. 1984).

I conclude that the Employer has met its burden to establish that Claimant was terminated for misconduct. In particular, claimant had a history of disrespectful behavior toward his superiors. Not only was this past behavior disrespectful, but it was also aimed primarily toward women in the store. Afterwards, he had been warned that this behavior would not be tolerated. Employer's handbook, which Claimant received upon hire, also prohibits creating a hostile work environment and engaging in unprofessional behavior. Despite these warnings and the guidance in his handbook, Claimant engaged in truly inappropriate and sexist behavior when he called a visiting store manager a vulgar and demeaning term. He then pushed back on and indeed ignored her reasonable instruction to put out more sub sandwiches. Such behavior cannot and should not be tolerated in any workplace, and it amounts to substantial and willful wrongdoing in the workplace.

For all of these reasons, I conclude Claimant was terminated based on disqualifying misconduct here. IWD's decision to this contrary must be REVERSED.

Furthermore, because the Claimant's separation was disqualifying, any benefits paid on the claim would be benefits to which he was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits.

However, the record before the undersigned is silent as to the amount of benefits Claimant received as well as whether Employer participated in the fact-finding interview or timely submitted any documents. Without such evidence, the undersigned cannot make a determination on whether any benefits must be repaid or whether Employer should not be charged.

DECISION:

The April 6, 2022 (reference 02) unemployment insurance decision is REVERSED (found to be incorrect). Claimant is not eligible to receive benefits.

David Lindgren
Administrative Law Judge

6/28/2022

Decision Dated and Mailed

Cc:
Donald L. Lindquist, Claimant (by First Class Mail)
Casey's Marketing Company, Employer (by First Class Mail)
Natali Atkinson, IWD (By Email)
Joni Benson, IWD (By AEDMS)

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Case Title: LINDQUIST V. CASEY'S MARKETING COMPANY

Case Number: 22IWDUI0124

Type: Proposed Decision

IT IS SO ORDERED.

David Lindgren, Administrative Law Judge