

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TOMMY CRAIG
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 14A-UI-06192-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/18/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 4, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 9, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Tami Johnson participated in the hearing on behalf of the employer with witnesses, Monica VonSeggern and Lori Ceselski. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a store manager for the employer from July 25, 2011, to May 19, 2014. He was informed and understood that under the employer's work rules, unprofessional conduct and harassment of employees was prohibited. He received a warning on April 23, 2014, after it was alleged that he had joking come up behind an employee and scared her by saying "boo." This was actually something another employee had done, but the claimant took responsibility for it.

In approximately January 2014, the claimant had left a note for employees on the overnight crew stating that "All the stupid, retarded stuff" that they had gotten away with was going to stop. The claimant's supervisor was notified about this soon after it occurred. She verbally spoke to him about the note but imposed no discipline.

In mid-May, a disgruntled employee notified an area supervisor about the note. The employer mistakenly believed this was a recent event. The employer terminated the claimant on May 19, 2014, for posting this note, which was considered unprofessional and harassing.

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 unemployment insurance rules provide: "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." 871 IAC 24.32(8).

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 claimant testified very credibly that the note was posted in January and his supervisor had talked to him about it at the time. Since management with the employer was aware of this several months before the claimant's discharge, it cannot be treated as a current act of misconduct. 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 June 4, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs