

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SKYLAR P LAIR
Claimant

CASEY'S MARKETING CO
Employer

APPEAL 15A-UI-02985-LT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/18/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 27, 2015, (reference 02) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 7, 2015. Claimant participated. Employer participated through manager Louise Reafleng and cashier Billie Winchel. Employer's Exhibit 1 was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a cashier and was separated from employment on February 16, 2015, when she was discharged. On February 7 between 3 p.m. and 4 p.m. Winchel observed kitchen worker Mike Aguirre and claimant arguing verbally about work hours and they began swearing at each other. Mike told claimant, "I hope you die." Claimant told him to "shut up" but did not use foul language in front of customers. There was a lot of crying and yelling in front of customers so Winchel called Reafleng to resolve the situation since there was no manager on duty. Claimant left when her shift was over. Reafleng's supervisor, Mary Ann Major, told her to issue claimant a write-up/corrective action/written warning on February 9 for profanity and fighting in front of customers. The employer did not know about Aguirre's threat to kill claimant with his bare hands until then because Reafleng cut claimant off while they were on the phone on February 7. The human resource department later told Reafleng to discharge her because of alleged use of profanity in the store. Aguirre had a history of verbal abuse and threats and claimant had quit in late 2014, because of him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

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 employer has not met the burden of proof to establish that claimant swore in front of customers and even if she raised her voice in response to Aguirre's abusive behavior, it did not rise to the level of disqualifying conduct. Even had the claimant sworn in the store in response to Aguirre's threats and verbal abuse, inasmuch as the employer had warned claimant about the final incident on February 7, 2015, and there were no incidents of alleged misconduct thereafter, it has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning until the discharge date on February 16, 2015. The employer has not established a current or final act of misconduct. Accordingly, benefits are allowed.

DECISION:

The February 27, 2015, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs