

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALECIA K FRITZ
Claimant

APPEAL NO. 09A-UI-08400-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**Original Claim: 04/12/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated June 2, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 9, 2009. The employer participated by Ann Yotty. The claimant failed to respond to the hearing notice and did not participate. Exhibit 1, pages 1 through 4, was admitted into evidence.

ISSUE:

The issues in this matter are whether the claimant was discharged for misconduct and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for the employer April 13, 2009. The claimant was terminated for insubordination. The claimant called her manager Ann Yotty, on April 13 requesting her to come in to cover for an employer who did not show up. The claimant told the manager when she arrived that it was her responsibility to cover for employees who do not show up. The statement was accurate, but the manager felt the tone was disrespectful and should not have been said in front of customers and other employees. The claimant said the manager was crazy or acting crazy. The claimant received a written warning on March 3, 2009 for complaining about other employees in front of customers and acting in an unacceptable manner.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

871 IAC 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 gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The claimant's tone of voice and comments on April 13, 2009 may not have been as respectful and deferential as the employer wanted. The employer was not sure if customers heard the comments. The employer has the right to dismiss any worker they are dissatisfied with. However, in order to show disqualifying misconduct, the incident must demonstrate a willful and wanton disregard of the employer's interest. The employer has demonstrated unsatisfactory conduct, but not conduct that meets the definition of disqualifying misconduct.

The administrative law judge holds that the evidence has not established that the claimant was discharged for an act of misconduct when claimant violated the employer's policy concerning work behavior.

DECISION:

The representative decision dated June 2, 2009, reference 01, is affirmed. The claimant is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw