

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MERRY C MOORE**

Claimant

**APPEAL NO. 14A-UI-00198-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/17/13**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated December 20, 2013, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on January 30, 2014. The claimant participated personally. Linda Rapp and Sabrina Juan Mateo were witnesses for the claimant. The employer participated by Deb Conrad, Manager. The record consists of the testimony of Deb Conrad; the testimony of Merry Moore; the testimony of Sabrina Juan Mateo; the testimony of Linda Rapp; and Employer's Exhibits 1-9.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a convenience store chain. The claimant worked for the store located in What Cheer, Iowa. Her date of hire was April 19, 1996. She initially worked as a cook and was later promoted to cashier. She was a full-time employee. The claimant's last day of work was November 20, 2013. She was terminated on November 20, 2013.

The incident that led to the claimant's termination occurred on November 18, 2013. The employer believed that the claimant was talking about a fellow employee, Sabrina Juan Mateo, who had just been terminated by the employer. Customers supposedly heard this conversation. The claimant denied that she was talking about Ms. Mateo since she did not even know that Ms. Mateo had been terminated. The claimant found out Ms. Mateo's termination after she had been terminated on November 20, 2013.

The claimant had received a written warning on July 11, 2013, after a customer made a complaint about the claimant to corporate headquarters. The claimant had had a dispute with a state trooper and made a comment about this when another state trooper was in the store. The

state trooper complained about this. The claimant was also cited for talking about the store manager and assistant manager on July 4, 2013. The claimant was specifically told that was to be polite and professional at all times. (Exhibit 6)

### **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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. An employer can reasonably expect that an employee will not discuss personal issues or employer business when customers could hear such discussions. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is insufficient evidence in this record that the claimant was discharged for a current act of misconduct. The employer discharged the claimant for talking about another employee when customers were in the store and could hear what was being said. This conversation allegedly took place on November 18, 2013, and concerned an employee who had been terminated named Sabrina Juan Mateo. The claimant denied that she had been discussing this employee and testified that she did not even know that Ms. Mateo had been terminated. Ms. Mateo confirmed the claimant's testimony. The customer that overheard the conversation did not testify at the hearing. A customer who might have been present, Linda Rapp, said that she did not hear everything.

The employer's evidence that the claimant was discussing personnel issues is hearsay. While hearsay is admissible in administrative hearings, it has limited value in proving misconduct. Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code section 17A.14(1). Allegations of misconduct 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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer did not offer testimony from a firsthand witness on what the claimant said concerning another employee. Ms. Conrad said she spoke to a customer, who confirmed what the claimant said, but that customer's name was not identified nor did he or she testify at the hearing. The testimony from the claimant and Ms. Mateo show that the claimant could not have been discussing Ms. Mateo's termination because she did not even know that Ms. Mateo had been terminated. There is simply insufficient evidence to show that the claimant engaged in the behavior for which she was terminated. Benefits are therefore allowed if the claimant is otherwise eligible.

#### **DECISION:**

The decision of the representative dated December 20, 2013, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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