

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A MOONEY

Claimant

APPEAL NO. 13A-UI-09667-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 07/14/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 16, 2013, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on September 25, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Edward Morris. Dianna Fossum participated in the hearing on behalf of the employer with witnesses, Deb McKenzie and Karen Hendricks. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a donut maker from November 3, 2012, to July 16, 2013. At the time that the claimant was hired, she disclosed to the store manager, Christina Solis, her criminal history, which included felonies and time in prison. Despite this, Solis instructed the claimant that she should state on her job application that she had not been convicted of a crime other than a routine traffic violation because Solis believed she deserved a second chance.

In July 16, 2013, an employee informed the district manager, Dianna Fossum, that during work hours, the claimant was talking about using drugs. This caused Fossum to conduct a background investigation, which disclosed the claimant's criminal history, including felonies, in Iowa and Illinois.

On July 16, 2013, Fossum discharged the claimant for falsifying information on her job application in violation of the employer's rules.

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 of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant disclosed to the store manager, Christina Solis, her criminal history, which included felonies and time in prison when she was hired and Solis instructed the claimant that she should state on her job application that she had not been convicted of a crime. The employer knew that the claimant was asserting this as her defense, but made no effort to have Solis participate in the hearing to dispute this. The claimant was discharged 8.5 months after she disclosed her criminal history to her hiring manager and knowingly answered a question the job application falsely. No current act of work-connect misconduct has been proven.

DECISION:

The unemployment insurance decision dated August 16, 2013, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css