

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

IESHA A TENSLEY
Claimant

APPEAL NO: 14A-UI-10617-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 11/17/13
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 30, 2014 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the October 30 hearing with her witness, James Clark. Diane Fossum, the area manager, and Mary Bernauer, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 6, 2014. She worked less than 35 hours a week as a cashier and kitchen employee. When she started working, the claimant received information about the employee discount policy. The policy informs employees they receive a 50 percent discount on prepared food that is consumed while they are working.

The claimant did not recall Bernauer reminding to her in January that she could not use the employee discount for a pizza she took home. The claimant denied this incident took place because she understood the employer's discount policy.

On September 10, Clark drove the claimant to work. After he put air in his truck tires, he went inside the store and witnessed the claimant and two other employees engaging in a verbal confrontation. He remained at the work place until Bernauer arrived. Before the confrontation occurred the claimant purchased some orange juice and six donuts. She used her employee discount on the donuts. The orange juice and donuts were bagged and set off to the side.

After Bernauer arrived, she sent the claimant home because the claimant was upset. Before Clark left, he noticed the bag off to the side and asked whose bag it was. Bernauer indicated it was the claimant's. He asked if he could take it and Bernauer gave him the bag of donuts.

After Bernauer arrived at the store and sent the claimant home, the claimant contacted the employer's corporate human resource office to report the incident. About the same time that the claimant contacted the human resource department, Bernauer contacted Fossum and asked her to come to the store to investigate the incident that occurred that morning.

When Fossum arrived, the claimant had already left the store. Fossum reviewed the store video to find out what happened that morning. While she watched the video, she noticed the claimant bought donuts with her employee discount and Clark took them home. She concluded the claimant violated the employee discount policy because she did not personally consume the donuts at work.

Fossum decided to review more video to find out if the claimant had violated the employee discount policy prior to September 10. The employer discovered that on August 13 the claimant took home Buffalo wings that she used her employee discount on. On September 12, Fossum told the claimant she had watched the September 10 video and saw her use her employee discount on donuts that were taken out for the store. Fossum discharged the claimant for violating the employee discount policy. Fossum did not say anything about what she saw on the August 13 video she had reviewed.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant admitted on September 10 she bought donuts and used her employee discount for the donuts. After she bought the donuts, a verbal confrontation occurred. Both the claimant and Clark testified that Bernauer gave the bag of donuts to Clark and he walked out of store with the donuts. Fossum testified that when she reviewed the video, she saw the claimant purchase the donuts and then gave them to Clark. Since the employer did not provide a copy of the video, the evidence indicates Bernauer gave the bag of donuts to Clark when the claimant

was no longer at the store. This conclusion is supported by the fact Bernauer did not dispute the claimant's and Clark's testimony. The evidence does not establish that the claimant violated the employee discount policy on September 10.

Since the employer discharged the claimant for violating the employee discount policy on September 10, the employer did not establish that the claimant committed work-connected misconduct. As of September 14, 2014, the claimant is qualified to receive benefits.

The claimant had established a claim before she started working for the employer. The employer is not one of the claimant's base period employers on the claim she established during the week of November 17, 2013. During the claimant's current benefit year, the employer's account will not be charged. If the claimant establishes a new benefit year and the employer is one of her base period employers, the employer's account may then be charged for benefits paid to the claimant.

DECISION:

The representative's September 30, 2014 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but did not establish that she committed work-connected misconduct. As of September 14, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged if the employer becomes a base period employer.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css