

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARCY ROEDER

Claimant

APPEAL NO: 14A-UI-07802-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 06/22/14

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 22, 2014 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated at the August 20 hearing with her attorney, Shaun Thompson. Teresa Garrett, the area supervisor, Jill Lampan and Lori Ceselski, an Equifax employee, 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:

In June 2008 the claimant started working for the employer as a full-time store manager. Jill Lampan worked as the claimant's assistant manager for five years. Problems between the claimant and Lampan started in January 2014.

In January 2014, Garrett was auditing payroll. Lampan was working when Garrett was doing her audit. When Garrett asked Lampan some questions, Lampan reported some issues that resulted in Garrett giving the claimant a corrective action. Garrett understood the claimant believed Lampan had backstabbed her and was upset with Lampan. Communication between the claimant and Lampan changed after this incident. Garrett received information that the claimant would not talk to Lampan and acted mean to Lampan. In an attempt to resolve the tension and communication issues between the two women, Garret and another manager met with the claimant in late April and early May. They instructed the claimant to meet with Lampan and the second assistant manager to resolve issues in the store.

The claimant had meetings with Lampan and other employees as the employer directed. After the meetings in May, the claimant believed the meetings resolved the issues or at the least the claimant and Lampan were working to resolve issues. The claimant tried to communicate with Lampan. The claimant felt Lampan continued to report issues to Garrett instead of the claimant.

Lampan acknowledged the claimant talked to her about store issues and answered any questions Lampan had concerning work. When the employer talked to the claimant about resolving communication issues between herself and Lampan, the employer did not give her any written warnings. The claimant knew there was tension between herself and Lampan, but the claimant had no idea her job was in jeopardy.

The claimant went on vacation June 5 through June 10. Sometime prior to June 5, the claimant was asked to review the store video because Lampan reported another employee was stealing bread. The claimant reviewed the video and saw no evidence of an employee stealing bread from the employer and reported her observation to Garrett. In May, sometime after the accusation had been made, the employee who had been accused made a comment that the claimant and the second assistant manager, K. heard. This employee said, "That f__ thwat followed me to the dumpster and I about broke her legs." The claimant did not say anything to this employee because she concluded the employee was frustrated and just venting his frustration. Although K. heard the comment, she did not report it until June 10 when the claimant returned from her vacation.

While the claimant was on vacation, this same employee had two no-call, no-show incidents. The first time the employee did not call in or report to work, Lampan gave the employee a written warning. The second time the employee did not call in while the claimant was on vacation, Garrett told Lampan to discharge the employee. Before the claimant went on vacation, Lampan knew this employee had not called in or reported to work at least one time earlier in the year. Lampan concluded the claimant had not disciplined the employee for this incident. Lampan's conclusion was not correct. The claimant had addressed the no-call, no-show incident with this employee. After the claimant learned this employee had family issues, she told the employee to take the rest of that week off from work to resolve the personal issues.

When the claimant returned from vacation, she did not ask Garrett or Lampan why this employee no longer worked for the employer. Garrett concluded this was another example of the claimant's failure to effectively communicate with Lampan about store issues. Garrett did not realize the claimant saw the paperwork regarding the employee's termination and knew and understood why the employee had been terminated.

On June 23, the employer told the claimant she was terminated for the following reasons: inappropriate and unprofessional behavior which included failing to properly investigate an allegation that an employee was stealing from the employer, discussing confidential information with other employees, failing to take appropriate action when an employee threatened another employee and failing to address employee concerns – such as asking why an employee had been terminated.

The claimant established a claim for benefits during the week of June 22, 2014. The employer participated with a written statement at the fact-finding interview. The claimant filed claims for benefits for the weeks ending June 28 through August 23, 2014. She received a gross benefit payment of \$3723 in benefits for these weeks.

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 employer established business reasons for discharging the claimant because as the store manager it was her ultimate responsibility to resolve store issues. However, before the claimant can be disqualified from receiving benefits, the employer put her on notice that her job is in jeopardy if she does not follow certain procedures. After the employer talked to the claimant in late April and early May, the claimant followed the employer's instructions. She met with her management team to talk through and work out issues. As a result of these meetings, the claimant believed her management team was on track to resolve issues at the store. Instead of being open with the claimant, her management team reported on-going concerns to Garrett. The evidence indicates the claimant followed the employer's directive and tried to work with her management team to resolve issues. The employer did not establish that the claimant committed work-connected misconduct. Therefore, as of June 22, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's July 22, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of June 22, 2014, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs