

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIDGET M HURT**  
Claimant

**APPEAL NO. 11A-UI-10774-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORES**  
Employer

**OC: 07-10-11**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 2, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 9, 2011. The claimant did participate. The employer did participate through (representative) Sue Allyn, District Manager, and Mary Kinney, Store Manager. Employer's Exhibit One was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a clerk and pizza maker part time beginning July 30, 2007 through June 29, 2011 when she was discharged. The employer held a meeting to pass out twenty-five dollar gift cards to all of the employees. The claimant was angry that she had to come to the store to pick-up her gift card and made derogatory comments about the supervisor. The supervisor asked her to come to the back room to discuss why she was upset. The claimant told her it was "bullshit" and then told her that there was no use to speak to her "because she did not fucking listen and nothing ever fucking changed." The claimant knew that she was not allowed to use profanity when in the store nor was she allowed to speak to coworkers or supervisor using profanity.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. EAB*, 462 N.W.2d 734 (Iowa App. 1990). The claimant use of profanity was substantial misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

**DECISION:**

The August 2, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs