

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANELLE R HAGGARD
Claimant

APPEAL NO: 12A-UI-04058-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/11/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's April 11, 2012 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing. Margaret Highland, 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 employer hired the claimant to work as a cook. The claimant worked an average of 30 or more hours a week.

On February 11, 2012, early evening, a female customer used the restroom and passed by the kitchen where the claimant was working. As the customer walked out the store she called the claimant an inappropriate name, which the claimant heard. Shortly after the customer walked out, the claimant went outside to smoke. When the claimant saw this customer outside, she asked her to leave. The customer responded that she was not leaving because she was waiting for a ride. The claimant then asked the customer why she said what she had about the claimant. The customer then made comments that upset the claimant. The two women engaged in a verbal confrontation. The claimant admitted she raised her voice at the customer when they were outside. During the verbal confrontation in the parking lot, they yelled at one another and argued about boyfriends. They ended their verbal confrontation and the claimant went back to work. Although there were three other employees working and three customers in the store, no one reported this incident to Highland.

On March 9, Highland's supervisor asked her to review the video footage from February 11. Someone had complained about the incident the claimant had been involved in on this date. Highland reviewed the video and could see that the claimant went outside and the two women

were close to one. Highland could make out the actions of the women, but did not know what either one said. Highland talked to the other employees on duty who reported they had not said anything about the incident because they did not want to get the claimant into trouble.

The employer discharged the claimant on March 9 for her inappropriate conduct on February 11, 2012. The employer concluded that when the claimant went outside, she did so to confront the customer. The employer considered the resulting verbal confrontation between the claimant and a customer in the employer's parking lot as a violation of the employer's code of conduct.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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 incident the employer discharged the claimant for occurred on February 11 or almost a month before she was discharged. Since the claimant had gone outside to smoke, not to confront the customer the evidence does not establish that the claimant intended to engage in a verbal confrontation. The claimant's testimony as to what was said between the two of them is undisputed. The claimant used poor judgment when she asked the customer why she called the claimant an inappropriate name. Even though the employer had business reasons for discharging the claimant, the claimant was discharged for an incident that was not a current act and was an isolated incident. As result, the evidence does not establish that the claimant committed a current act of work-connected misconduct. As of March 11, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's April 11, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of March 11, 2012, 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