

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMBER D CORKERY
Claimant

APPEAL NO: 06A-UI-09364-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/130/06 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Amber D. Corkery (claimant) appealed a representative's September 19, 2006 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on November 13, 2006. The claimant participated in the hearing and presented testimony from two other witnesses, Candi Knospe and April Richards. One other witness, Blaine Corkery, was available on behalf of the claimant but did not testify. Melissa Metzger appeared on the employer's behalf. One other witness, Connie Smith, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibit One and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 2, 2005. As of December 23, 2005, she worked part time (approximately 35 hours per week) as a cashier and kitchen worker in the employer's Walker, Iowa store. Her last day of work was August 11, 2006. The employer discharged her on August 14, 2006. The primary reason asserted for the discharge was falsifying her payroll records by leaving earlier than reported.

The claimant normally worked five nights per week on a 4:00 p.m. to 11:00 p.m. schedule. The claimant and another employee each assisted in the training of a new employee during late July and early August. That employee complained to Ms. Metz, then the store manager, that she was being sent home prior to closing and that she was not being given adequate training in closing the store. As a result, Ms. Metz reviewed video surveillance for at least August 7 through August 11. She saw that according to the time stamp on the video that on four of those days the claimant had closed the store between 10:50 p.m. and 10:56 p.m., rather than 11:00 p.m., and that she was leaving the store within a few minutes after 11:00 p.m. (according

to the video time stamp), while her time records showed a time out of 11:15 p.m. Because the employer concluded this was falsification of the time records, the claimant was discharged.

However, there were time discrepancies between the video time stamp, the cash register time, and the time shown on the wall clock; the discrepancy was frequently in the vicinity of seven minutes. Further, even though it was inconsistent with the employer's written policy regarding time reporting, the time recording practice as the claimant had been instructed by other employees and other managers had been that she was to report her time rounded to the next quarter hour, so that if she left after 11:00 p.m., she was to report her time out as 11:15 p.m.

The claimant had not received prior warnings for similar conduct. She had received a prior warning on having her shirt untucked, and on August 14 she received an additional warning for again having her shirt untucked as well as making an error on handling a coupon, but those were not the stated reasons for the termination.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is her alleged falsification of her time records. The employer has not established that the claimant was closing the store early as determined by a uniform time standard. Under the circumstances of this case, the claimant's reporting of her time as other than the exact time of her exit from the store was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's September 19, 2006 decision (reference 03) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs