

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY BANSE
Claimant

APPEAL NO: 11A-UI-11981-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/31/11
Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated September 1, 2011, reference 01, which held that Ashley Banse (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 5, 2011. The claimant provided a telephone number but the telephone number had been disconnected when that number was called for the hearing, and therefore, did not participate. The administrative law judge called the telephone number the claimant provided to Iowa Workforce and that number was not valid. The employer participated through Virginia Manning, Store Manager. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier/cook from January 15, 2011 through August 3, 2011 when she was discharged for repeated insubordination. The employer issued the claimant a verbal warning on June 4, 2011 for being late for her shift and then being rude when she arrived for work. The verbal warning was changed to a written warning on July 27, 2011. On that same date, the claimant received a written warning for insubordination after she argued with her manager in front of customers on July 15, 2011.

The store manager worked on August 3, 2011 but the claimant did not. A person came in and asked for an employment application and whether the employer was hiring. The manager told the person they were not currently hiring but that could change in a minute. The manager makes the same comment to most applicants.

Shortly thereafter the claimant called the employer and said that the person asking for the application was a good friend of hers. She said that she could not believe what the manager told her friend. The claimant was angry and said, "I can't believe you told her that I'm gonna be done!" The manager told the claimant she never said that but the claimant would not listen to her. The claimant continued to argue and use profanity; the employer did not want to repeat in the hearing what the claimant had said but did admit the claimant used the "F bomb" and that she said, "God Damn!" The manager subsequently talked to her supervisor and it was determined the claimant would be terminated.

The claimant filed a claim for unemployment insurance benefits effective July 31, 2011 but has not received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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 claimant was discharged on August 3, 2011 for repeated insubordination. She had been warned and the comments which upset her on August 3, 2011 had not even been said by the manager but the claimant refused to listen. The claimant's angry questioning of her manager shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated September 1, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs