

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANNE M YORK
Claimant

APPEAL NO: 19A-UI-00668-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOVE'S TRAVEL STOPS AND COUNTRY S
Employer

OC: 12/16/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 14, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 7, 2019. The claimant participated in the hearing. Jamie Brockhohn, General Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time fresh food coordinator for Love's Travel Stops and Country Store from August 19, 2015 to December 20, 2018. She was discharged for displaying a negative attitude.

On August 28, 2018, the claimant was the general manager and received a documented coaching for failure to follow the food safety guidelines which resulted in no expiration date on the produce causing the food to be thrown away. The claimant was removed as general manager and placed in the employer's Hardee's restaurant as the assistant general manager. The claimant had a negative attitude and the employer felt she created a hostile work environment. When she worked as the assistant general manager of Hardee's the employer had a turnover rate of 480%. After she was demoted from that position, the turnover rate dropped to 60%. The claimant continued to speak negatively about other management employees and talked excessively about her personal life.

On September 14, 2018, the employer issued the claimant a final written warning stating she was expected to arrive on time regardless of what shift she was working, she needed to be a team player and good role model or her employment could be terminated for creating a negative environment. The employer moved the claimant to the store side of the business for the second time but the same issues of the claimant being negative about management and talking about

her personal life continued. The final straw for the employer occurred when an employee who was on FMLA during the claimant's demotions returned and after two days of working with the claimant went to the office in tears stating she could not work with the claimant any longer. The employer terminated the claimant's employment December 20, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 substantial and 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 claimant was demoted several times and her pay was cut from \$15.00 to \$14.25 per hour. Those moves admittedly affected her attitude toward management. It is human nature for employees to complain about their jobs and management. Venting to other employees is very common. While the claimant may have taken it too far and made other employees uncomfortable on occasion, the employer did not provide any evidence from other employees stating they quit because of the claimant or that her complaints made them uncomfortable. The claimant admits she had a negative attitude at times but the employer did not prove how that concretely affected the business.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct, as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The January 14, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn