

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIFANEY A WIDMER
Claimant

APPEAL NO. 09A-UI-07464-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**Original Claim: 04/12/09
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company filed an appeal from a representative's decision dated May 8, 2009, reference 01, which held that no disqualification would be imposed regarding Tifaney Widmer's separation from employment. After due notice was issued, a hearing was held by telephone on June 10, 2009. Mr. Widmer participated personally. The employer participated by Amy Seeley, Manager. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Widmer was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Widmer was employed by Casey's from August 25, 2003 until February 27, 2009. He was employed full time as a clerk and kitchen worker. He was discharged because of a complaint that he was rude to customers.

Mr. Widmer received a written warning on July 25, 2007 because of inappropriate remarks he made in the presence of a customer. There were no further complaints until February 13, 2009, when a customer complained directly to the corporate office. The customer indicated that he was short and unpleasant and did not say "thank you." The termination notice does not identify any other occasions on which Mr. Widmer was rude after February 13. The local store was immediately made aware of the complaint received by the corporate office on February 13 but did not discharge Mr. Widmer until February 27. He continued to perform his normal job during the interim between February 13 and February 27.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321

N.W.2d 6 (Iowa 1982). The employer's burden included establishing that the discharge was prompted by a current act of misconduct. 871 IAC 24.32(8). In the case at hand, the employer received a complaint on February 13 but waited two weeks before discharging Mr. Widmer. The evidence failed to establish any justification for the delay.

The employer testified that there was a direct customer complaint on February 27, the day Mr. Widmer was discharged. The administrative law judge did not find this contention credible. The document reflecting his discharge (Exhibit One) cites the complaint of February 13 as the basis for the action. If the manager had just received a complaint of rudeness directly from a customer, one would expect it to be noted on the document. Moreover, if there was a complaint, the employer did not personally witness the conduct that gave rise to the complaint. The term "rude" is a conclusion and does not identify the specific conduct that was felt to constitute rudeness. Without more details, the administrative law judge is not inclined to conclude that an individual was, in fact, rude.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated May 8, 2009, reference 01, is hereby affirmed. Mr. Widmer was discharged, but disqualifying misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw