

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA S COUNSELL

Claimant

APPEAL NO: 08A-UI-08208-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

**OC: 04/08/07 R: 02
Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's September 5, 2008 decision (reference 03) that concluded Angela S. Counsell (claimant) was qualified to receive benefits, and the employer's account could be subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 30, 2008. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which she could be contacted to participate in the hearing. As a result, no one represented the claimant. Sharon Mason, the manager, testified on the employer's behalf. Mary Mugan was available to testify on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work as a part-time cashier on May 23, 2008. The claimant's job was not in jeopardy until July 4, 2008.

When the claimant reported to work on July 4 she was upset. After the claimant worked two hours, she asked Mason if she could go home early. Mason denied the claimant's request. The claimant then threatened to kill Mason by kicking her butt and then gutting her. Shortly after the claimant made the threatening comment, Mason told the claimant to leave work.

On July 5, 2008, the employer made the decision to discharge the claimant for threatening Mason. The employer informed the claimant on July 11 that she was discharged for making threatening remarks on July 4, 2008.

The claimant reopened her claim for benefits during the week of July 6, 2008. She has filed for and received benefits since July 6, 2008.

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 section 96.5-2-a. 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).

The claimant's remarks and conduct on July 4 constitute an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant because she committed work-connected misconduct on July 4. As of July 6, 2008, the claimant is not qualified to receive benefits.

The issue of overpayment of benefits and/or waiver of overpayment is remanded to the Claims Section to determine.

DECISION:

The representative's September 5, 2008 decision (reference 03) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment of benefits and/or waiver of overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs