

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHEILA A PARSONS

Claimant

APPEAL 15A-UI-04976-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/29/15

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 23, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 3, 2015. Claimant participated. Employer participated through (representative) Debbie Robertson, Store Manager and Dalton Sternat, Cashier/Kitchen Helper. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a kitchen helper, pizza and donut maker beginning on April 25, 2012 through March 28, 2015 when she was discharged.

The claimant got into a verbal argument with a coworker Tonya. Both of them used profanity and were screaming at each other in front of coworker Mr. Sternat and customers. The claimant called Tonya a "fuc**ing ho" and threw money at her. The claimant walked out of the store to take a smoke break because she was angry with Tonya. The claimant then returned inside the store and heard Tonya speaking to the assistant manager and thought she was reporting what had occurred to management. The claimant then began to yell again at Tonya using profanity. Mr. Sternat heard both of them and at no time did Tonya bring up the claimant's children. Tonya threatened the claimant by telling her she was going to "kick her ass." Instead of seeking assistance from a manager, the claimant walked off the job. Tonya never laid her hands on the claimant. The claimant treated Tonya as badly as she was treated by Tonya. The claimant was not promised that she could only work with employees she liked or got along with. Both Tonya and the claimant were discharged for their actions.

The claimant walked off the job without permission, treated a coworker disrespectfully and subjected another coworker and customers to a profanity laced tirade on March 27.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

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 administrative law judge is not persuaded that Tonya ever mentioned anything about the claimant's children during the argument as Mr. Sternat was there the entire time and did not hear Tonya say anything about the children. Even if Tonya had mentioned the claimant's children, that is not an acceptable excuse for calling a coworker a "f**king ho." The claimant's actions, in front of customers were conduct not in the employer's best interests. That in conjunction with the claimant walking off the job without permission is substantial job connected misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The April 23, 2015 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css