

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINE F DORSEY

Claimant

APPEAL NO: 15A-UI-00240-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/14/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's December 31, 2014 (reference 01) decision that concluded Christine F. Dorsey (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 2, 2015. The claimant participated in the hearing. Rosita Boley appeared on the employer's behalf and presented one witness, Alisha Weber, on the issue of participation in the fact-finding interview. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on April 19, 2015. She worked part time (about 20 hours per week) as a kitchen employee at the employer's Burlington, Iowa store. Her last day of work was December 10, 2014. The employer discharged her on that date. The reason asserted for the discharge was a food safety violation.

On December 10 the claimant worked a shift from 10:00 a.m. to 4:00 p.m. She had been off work sick earlier in the week and when Boley, the store manager, asked the claimant if she could work later that day the claimant had responded that she was still not feeling very well. At about 2:00 p.m. the claimant was preparing a sandwich for a customer. She did wipe her nose with the back of her gloved hand, then wiped her hand on her shirt, and then did not put on fresh gloves before finishing making the sandwich. The customers reported this to the health department and an inspector came to the store, resulting in the employer sending the claimant home.

The employer discharged the claimant due to this incident and because it followed a written warning for a food safety issue the claimant was given on November 24, 2014 when she had absent-mindedly licked a spatula she had been using.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is having had the two food safety violations within a short period of time. The claimant acknowledged that she had absent mindedly wiped her nose because she had not been feeling well. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. *Huntoon*, supra. There is no evidence the claimant intentionally ignored the safety interests. While the employer had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute and the claimant is not disqualified from benefits.

DECISION:

The representative's December 31, 2014 (reference 01) decision is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/can