

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLE K ARMSTEAD**  
Claimant

**APPEAL NO: 14A-UI-08906-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 08/03/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's August 20, 2014 (reference 01) determination that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated at the October 14 hearing with her witness, Kim Evans. Melinda Crawford, Store Manager, and Sarah Wright, Area Supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on March 22, 2014. The employer hired her to work 35 to 40 hours a week. Prior to July 24, 2014 the claimant's job was not in jeopardy. An employee, Z, reported to Crawford that the claimant and Evans harassed her on July 24. Crawford noticed that Z was crying and she told Crawford that she was scared to come to work or leave because the claimant and Evans told her to keep her mouth shut or she would be the next person sent to the office. Z had no idea what this comment meant, but felt that the claimant and Evans bullied her.

After the employee reported this incident, Crawford reviewed the video. She saw the claimant and Evans approach employee Z, but the video does not have any audio. Crawford contacted Wright, who then reported the incident to the corporate office. Without talking to the claimant or Evans, the corporate office personnel made the decision to discharge the claimant for harassing and threatening a coworker. The employer has zero tolerance for harassment or bullying at work.

On July 24 the claimant rode in the employer's vehicle with Evans, when Evans made a delivery. The claimant was not working. When the claimant and Evans returned to the store, the claimant punched in and took a temperature reading. Z made a comment that Evans overheard. After hearing Z's comment, Evans told Z that if Crawford had a problem with the claimant punching in early, she would address this issue with the claimant. Evans thought Z had a problem with sticking her nose in everyone's business. The claimant did not know Evans had said anything to Z. The claimant denied she harassed or bullied Z, or any other employee.

The employer informed the claimant she was discharged on July 29. Even though the employer gave the claimant an opportunity to make a comment on her termination paperwork, the claimant did not because the employer had already discharged her.

### **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 § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

If the claimant harassed or bullied an employee to the point she was scared to come to work, the claimant committed work-connected misconduct. The problem in this case is that the employee who reported the harassment did not testify at the hearing. The employer relied on unsupported hearsay information that was contradicted by the claimant and her witness. Since Crawford talked to the employee who made the complaint, she had better evidence than the evidence the employer presented at the hearing.

The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information. The claimant's denial that she made any harassing or bullying commit to this employee is supported by Evans' testimony. While the claimant and Evans have a motive to be less than accurate, Evans admitted she told the employee to basically mind her own business because if Crawford had a problem with the time the claimant punched in, Crawford would talk to the claimant. Evans admission as to what she told Z supports the claimant's testimony. It is difficult to understand without Z's testimony why she was so upset based on what the employer testified she told Crawford.

While I do not doubt the employee was very upset when she talked to Crawford, the credible evidence presented at the hearing does not establish that the claimant committed work-connected misconduct. Therefore, as of August 3, 2014 the claimant is qualified to receive benefits.

During the claimant's current benefit year, the maximum charge to the employer's account is \$5.33.

**DECISION:**

The representative's August 20, 2014 (reference 01) determination is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of August 3, 2014 the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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