

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LONZETTA DAY
Claimant

APPEAL NO: 18A-UI-06816-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/13/18
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 12, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 10, 2018. The claimant participated in the hearing. Bobby Cooper, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time store employee for Casey's Marketing Company from September 26, 2016 to May 13, 2018. She was discharged for attendance and attitude issues.

The claimant was routinely tardy and missed a few shifts but the employer did not issue any corrective action to the claimant. The employer talked to the claimant about her attendance and she said, "Message received." On May 5, 2018, the employer put up the new schedule and the claimant was scheduled to work 38 hours over a two week period. On May 6, 2018, the employer met with the claimant and discussed her issues. The employer told the claimant things had to change with regard to her attendance. On May 9, 2018, the claimant was a no-call/no-show. She was scheduled at 10:00 a.m. She sent the employer a text at 11:15 a.m. saying she was at Broadlawns Medical Center and would not be in to work her shift. The employer expects employees to provide reasonable notice before the start of their shift. On May 11, 2018, the claimant was scheduled at 6:00 a.m. and arrived at 7:06 a.m. On May 13, 2018, the claimant was scheduled from 6:00 a.m. to 2:30 p.m. She texted the employer at 3:15 a.m. and questioned the number of hours she received on the schedule. She stated she did not know if she would be in because it was not worth her time. The employer did not respond to the text message. The claimant was a no-call/no-show for her 6:00 a.m. shift May 13, 2018. An assistant manager came in to cover the claimant's shift. At 8:30 a.m. the claimant came into the store and told the assistant manager she was not there to work. The employer heard the claimant's voice and the commotion and went to the kitchen to ask the

claimant what she was doing. The claimant repeated she was not there to work and the conversation instantly became combative. The employer wanted to know what the claimant was doing there if she was not there to work and the claimant called the employer a racist for having two African American women working in the kitchen. The employer disengaged from the conversation when the claimant called him a racist and asked the claimant to leave the store two times but she refused both times. The claimant stated she was not leaving and there was nothing the employer could do about it. The employer said he was going to call the police and the claimant said go ahead and the employer did so. The claimant remained in the store until the police arrived and then stood outside by her car. The officers spoke to the employer and then to the claimant before returning to the employer to see if he had separation paperwork done. He was just completing the termination paperwork which he gave to the officer who gave it to the claimant who proceeded to leave at that time. The rest of that morning, the claimant and her friends repeatedly entered the store as customers without further incident.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant accumulated two no-call/no-show absences and one incident of tardiness between May 5 and May 13, 2018. While she was upset about the schedule, as a part-time employee, she was not guaranteed a certain number of hours as the employer must schedule due to business needs. Instead of accepting the schedule, the claimant was a no-call/no-show May 9 and May 13, 2018, but showed up at the store May 13, 2018, although she made it clear she was not there to work. Her actions were akin to taunting the employer and the assistant manager who was called into work for her. The claimant then proceeded to call the employer a racist because he had two African-American women assigned to the kitchen. The claimant's actions were inappropriate, unprofessional and insubordinate. Her behavior coupled with her attendance rose to the level of disqualifying job misconduct.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The June 12, 2018, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn