

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY A MORGAN

Claimant

APPEAL NO: 15A-UI-06542-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/17/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Amy A. Morgan (claimant) appealed a representative's June 4, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment after a separation from employment from Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 16, 2015. The claimant participated in the hearing and presented testimony from one other witness, Alaina Hawk. Sherry Decker appeared on the employer's behalf. 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:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on June 17, 2011. She worked full time as an assistant manager, most recently in the employer's Leon, Iowa store. Her last day of work was May 21, 2015. The employer discharged her on that date. The reason asserted for the discharge was improper cash handling and misuse of a personal cell phone.

The claimant had been given a warning on February 24, 2014 regarding using her cell phone for personal business while on duty and a question as to leaving a safe door unlocked. On April 2 2015 she was given a warning for attendance.

On May 18 and May 20 the claimant called the area supervisor, Decker, trying to resolve some cash shortages. Decker came and reviewed video surveillance to seek to track the variances, and observed that on those dates the claimant removed drops from the front safe but did not

promptly move the drops to a secured location in the office, but rather left them on the floor for several hours while she assisted the cashier at the check register. This was in violation of the employer's cash handling expectations, but the claimant had not specifically been trained to avoid doing this particularly where there was a business rush. There was no evidence that anything unethical occurred while the drops were not properly secured. Also during Decker's review of the video she observed that on May 18 the claimant had been on her personal cell phone for a few minutes. However, this was not for personal business, but the claimant was calling an employee to seek to find coverage for another employee who had called in an absence for a shift.

Because of the concerns regarding the cash handling and the cell phone use Decker had seen on the video, the employer determined to discharge the claimant.

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 the failure to well secure the drops on May 18 and May 20, and the belief that she had used her cell phone for personal business on May 18. The employer has not established that the claimant knew that her handling of the drops was improper, or that it was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated

instance, or a good faith error in judgment or discretion, and has not established that the cell usage was misconduct. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer 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 June 4, 2015 decision (reference 01) is reversed. 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/pjs