

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY L KROUGH
Claimant

APPEAL NO. 11A-UI-07112-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/01/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 27, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on July 19, 2011 at which time the claimant participated personally. The employer participated by Ms. Tammy Harding, Store Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Brittany Krough was employed by Casey's General Stores as a part-time cashier/pizza worker from February 2, 2009 until her discharge on April 29, 2011.

Ms. Krough was discharged after a company customer made a specific complaint that Ms. Krough had used vial and inappropriate language in the presence of customers. Because the claimant had received a number of verbal warnings from the store manager about the use of inappropriate language at work and because the customer was identified and provided information with specificity, the store manager considered the complaint to be credible and discharged Ms. Krough from employment.

Ms. Krough denies using the inappropriate language that was attributed to her and maintains that the complaint was generated by a disgruntled male customer who had attempted to establish a sexual relationship with her. Claimant further maintains that the customer had threatened to retaliate. Ms. Krough did not report the incident or the threat of retaliation to the store manager prior to being discharged.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter the evidence in the record establishes that the claimant had often used inappropriate language at work in the past and that the employer had repeatedly warned the claimant not to do so. The employer considered the complaint by the male customer to be credible because the male customer was a known customer and he provided specific information about the statements made by the claimant and the circumstances. Based upon the vial nature of the statement attributed to Ms. Krough, the employer made a management decision to terminate the claimant at that time.

Although the administrative law judge is aware that Ms. Krough maintains that the complaint was false and generated only in retaliation for her failure to enter a sexual relationship with the customer, the administrative law judge finds that the claimant's testimony strains credibility. The

claimant did not report to her employer the unusual conduct that she testified the male customer had engaged in and had not reported the alleged threats of retaliation. In view of the past warnings that had been issued to Ms. Krough, the administrative law judge finds that her conduct and failure to report the unusual conduct and threats of retaliation to be unreasonable. The administrative law judge also notes the use of at least questionable language by the claimant when participating during the hearing on this matter.

For the reasons stated above, the administrative law judge concludes that the employer has sustained its burden of proof in establishing the claimant's discharge took place under disqualifying conditions. Benefits are withheld.

DECISION:

The representative's decision dated May 27, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs