IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

LAURIE A WALKER
Claimant

CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES
Employer

APPEAL NO. 11A-UI-14501-LT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/09/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the October 26, 2011 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 1, 2011. Claimant participated with current employee Mary Rostro-Rubio and former coworker Tony Kile. Employer participated through Store Manager Richard DeLateur. Employer's Exhibit 1 was admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a cook/cashier from September 6, 2009 and was separated from employment on October 6, 2011. About ten minutes before her shift ended, a regular customer, not a couple, inquired of claimant if the veggie pizza in the warmer had meat on it, since she had problems in the past. She said, "No, it's just veggie." She also asked Dusty if she had put meat on the vegetable pizza and left to take the garbage out but did not give them a dirty look and was not snippy with them. The employer warned her on August 29 about a customer comment card complaint after the customer asked the price of food in the warmer and she allegedly replied, "How would I know, I'm just the cook?" The claimant may have referred the customer to the cashier but did not say, "How would I know?"

After the separation, Rostro-Rubio heard Brian Ahrends told a customer that claimant walked out and he had been trying to get people to call in complaints about her. On claimant's last day of work after she left for the day, Rostro-Rubio noticed other staff (Dusty, Shari, and Vicky) looking for things to complain about regarding claimant. Kile, who was fired the same day, never saw claimant being rude to customers and noticed that customers liked her food and would order food according to where she was working.

DeLateur became supervisor in January 2011. She had complained to DeLateur about First Assistant Manager Brian Ahrends on August 29, September 23, and October 2 and how he verbally degraded her in front of others. Claimant was written up for wearing earrings on a shift when other cashiers and kitchen workers wore facial piercings without similar consequences, and claimant believes DeLateur was retaliatory by taking her hours away and giving them to other staff. Dusty and DeLateur are friends, and management, including Ahrends, and many employees socialize before and after work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct

must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Rostro-Rubio's testimony is considered credible, as she was doing so at risk to her own employment and harmony with coworkers. Rostro-Rubio's statements support claimant's overall credibility and denial of the alleged customer complaints. For unknown reasons, Ahrends, some subordinates, and possibly DeLateur appear to have either manufactured issues to result in discipline to claimant or, at least, disparately applied the policies or discipline to claimant, since consequences were more severe than others received for some offenses such as wearing earrings. The employer has failed in its burden of proof to present substantial evidence to support the customer complaints, and the disparate application of the policy cannot support a disqualification from benefits. Benefits are allowed.

DECISION:

The October 26, 2011 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw