

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DOMINIQUE EZELL

Claimant

APPEAL NO: 18A-UI-10657-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/16/18

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 16, 2018, reference 01, decision that allowed benefits the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 8, 2018. The claimant participated in the hearing. Ashley Heard, Store Manager and Zontel McCann, Unemployment Insurance Consultant, 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 from June 29, 2018 to September 20, 2018. She was discharged due to an incident that occurred September 19, 2018.

The claimant was scheduled to work September 19, 2018, from 3:00 p.m. to 11:00 p.m. Her parents usually provide childcare for her son but were ill and unable to do so September 19, 2018. As a result, one of the claimant's friends was watching her son. Shortly before 9:00 p.m., the claimant's friend called and said she needed to come and get her son because her boyfriend told her he needed her to come home. Consequently, the claimant told her co-worker she needed to leave to get her son and he said he would notify Store Manager Ashley Heard. The claimant left the store at 9:00 p.m. and returned shortly thereafter with her son, and her friend and her friend's boyfriend and they all waited outside for Ms. Heard to arrive. The claimant's co-worker notified Ms. Heard the claimant had an emergency and Ms. Heard indicated she would be right there but had not arrived after roughly one hour and the claimant left with her son because it was late. She charged her phone when she arrived home and called Ms. Heard and asked if she could return to work. Ms. Heard instructed the claimant to come in the next morning at 7:00 a.m. The claimant arrived at the store at 6:45 a.m. September 20, 2018, and Ms. Heard terminated the claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

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

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). 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 substantial and 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 claimant was placed in a difficult situation when her childcare provider told her she needed to come and get her son because she could not watch him any longer. The claimant explained the situation to her co-worker and he contacted the store manager because the claimant's cell phone battery was not charged. The claimant went and retrieved her son and returned to the

store hoping to speak with Ms. Heard but Ms. Heard did not arrive for over an hour and the claimant left because it was late in the evening. She called Ms. Heard after charging her phone and was told to come into the store the following morning at 7:00 a.m. When she did, her employment was terminated.

While the claimant did not complete her shift September 19, 2018, this was an isolated incident of misconduct. The employer did not provide copies or dates of any written or documented verbal warnings. Under these circumstances, the administrative law judge finds the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The October 16, 2018, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn