

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDICE F KVARDA

Claimant

APPEAL NO. 09A-UI-17313-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/18/09

Claimant: Respondent (1)

Section 96.5-2-A -- Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 5, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 23, 2009. Claimant participated. Employer participated by Jennifer Knerr, Store Manager. The record consists of the testimony of Jennifer Knerr; the testimony of Candace Kvarda; and Employer's Exhibits 1-9.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer in this case owns and operates convenience stores. The claimant worked at a store in Cedar Rapids, Iowa. She was a full-time cashier/clerk and had worked at this particular Casey's store since May 2008. She was terminated on October 20, 2009, after a customer complaint was made to an area manager for Casey's.

The incident that led to the claimant's termination occurred on October 20, 2009. The claimant had been wearing gloves in the kitchen while making a pizza. A customer came to Blimpie's section and asked for a salad. The claimant started to make the salad and the customer asked the claimant to change her gloves. The claimant did not think it was necessary and so she turned around and changed her gloves. The customer complained to an area manager at another Casey's store and that area manager contacted Jennifer Knerr, the store manager. The customer felt that the claimant had rolled her eyes and huffed when asked to change her gloves. The claimant had previously been given numerous warnings, including a three-day suspension in September 2009, for rude behavior towards customers. She was told when she was given her three-day suspension that she would be terminated the next time a customer complained.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the duty a worker owes to the employer. Iowa law requires an employer to show that there has been a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees. Unsatisfactory conduct or failure in good performance as the result of inability or incapacity is not to be deemed misconduct within the meaning of the statute. The employer has the burden of proof to show misconduct.

After carefully reviewing the evidence and considering the testimony of the witnesses, the administrative law judge concludes that there is insufficient evidence to show misconduct. The claimant's job performance was not satisfactory to the employer given the customer complaints it received. Ms. Knerr explained that repeat business was essential for the store to prosper. The difficulty with customer complaints is that the standard a customer uses when making a complaint is not uniform and thus is not the most reliable evidence for concluding that a claimant should be disqualified for unemployment benefits based on misconduct. The legal definition of misconduct excludes unsatisfactory performance and the claimant's shortcomings on customer

service are unsatisfactory performance as opposed to misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated November 5, 2009, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css