

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER J PARKER

Claimant

APPEAL NO. 08A-UI-06257-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

**OC: 05/25/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 3, 2008, reference 01, that concluded she voluntarily quit employment without good cause attributable to the employer. A hearing was held on July 29, 2008, in Des Moines, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. Bo Knop participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant was hired to work full time for the employer as a donut maker and cashier on December 4, 2006. She was removed from working on the cash register in October 2007 due to some issues with cash shortages. She was changed to part time in March 2008 and informed that she would be doing cleaning and working in the kitchen as needed due to problems with attendance. Her supervisor was Jennifer Conley. The area supervisor was Bo Knop.

Even after Knop had instructed the claimant that she was not to be working on the registers except in an emergency, Conley and the assistant manager had sometimes allowed her to work the register.

On May 28, 2008, the claimant understood that she would be working as a cashier. When she reported to work, she signed in on the register to begin work. Conley told her that she would not be working on the register, but instead would be cleaning during her shift. The claimant told Conley that she was tired of cleaning and was not hired for cleaning. Conley told that she would be working in the kitchen on Friday. The claimant then said she wanted to go home. Conley replied, "fine, go home." The claimant left believing she had permission to leave. She did not intend to quit and was going to report to work on Friday.

Conley called Knop and untruthfully told him that the claimant had said she was tired of cleaning and walked off the job. Knop said they would consider her to have quit and to terminate her on Friday.

On May 30, 2008, Conley discharged the claimant for refusing to perform job duties and walking off the job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant was the only person with personal knowledge of what happened on May 28 who participated in the hearing. Her testimony about what happened is credible and outweighs the employer's evidence. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant complained about a job assignment and went home with permission from a supervisor. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated July 3, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css