

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORETTA P MILLER
Claimant

APPEAL NO. 09A-UI-01967-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING
Employer

**OC: 01/04/09 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's January 29, 2009 decision (reference 01) that concluded Loretta Miller (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 2, 2009. The claimant participated personally. The employer participated by Kelly Bogue, Store Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 28, 2007, as a full-time cashier/cook. The claimant signed for receipt of the employer's handbook on March 28, 2007. The employer issued the claimant written warnings on August 6, 2007, and August 15, 2008, for failure to follow instructions. The employer said the claimant smoked in front of the building, made long distance calls on the employer's telephone, excessively used the pizza telephone and talked to family and friends too much at work. The employer notified the claimant that further infractions could result in termination from employment. The claimant grew up in the town and knew a large number of the residents. She did not understand how she was to be friendly to customers who were purchasing items and follow the employer's instructions. She told her friends and family not to stand around in the business but she could not stop them from purchasing items. The claimant continued to perform her job duties when people she knew were shopping. The employer had no suggestions to give the claimant for what she should do if customers wanted to talk to her while she was working. On January 7, 2009, the employer terminated the claimant for talking too much to customers on January 4, 2009.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

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). 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). The employer did not provide sufficient evidence of job-related misconduct at the hearing. The employer did not know what the claimant could have done to follow the employer's instructions. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 29, 2009 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs