

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA K NELSON
Claimant

APPEAL NO. 07A-UI-08765-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/12/07 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 6, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 1, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Marsha Clausen participated in the hearing on behalf of the employer. Exhibits One, Two, and A were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a kitchen worker and clerk for the employer from September 19, 2005, to July 24, 2007. Marsha Clausen was the area supervisor.

On July 24, 2007, the claimant had called in and told the assistant manager, Vicki Shannon, that she was sick and would be late. After the claimant reported to work, she was still sick and suffering from severe diarrhea. She asked Shannon if she could leave but her supervisor insisted that she stay.

Later that morning, Clausen arrived at the store. She planned to give the claimant a written warning for unfriendly conduct. When she presented the warning, the claimant told that Clausen that she was sick and needed to leave. She told Clausen that she needed some time off. The claimant then left work. As she was leaving, she told Shannon that she was tired of being kicked around by Casey's. Shannon conveyed the claimant's comments to Clausen. At that point, Clausen decided to discharge the claimant for leaving work and for the comments she made when she left. She left a message for the claimant to call her a short time after the claimant left the store, but the claimant did not get the message right away. The claimant called in after she got the message but discovered that Clausen was on vacation until the following week and she was not going to be allowed to return to work until she talked to Clausen. The purpose of the meeting, however, would have been to discharge her.

The claimant obtained a doctor's note on July 26, 2007, excusing her from working until August 6. She brought the note in on July 29, 2007, and gave the note to Shannon. On August 2, 2007, Clausen mailed the claimant a letter informing her that she was discharged. This was confirmed in a conversation between Clausen and the claimant on August 4.

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.

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 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 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The reason the claimant was discharged was due to leaving work on July 24 and the comments she made to Shannon before she left the store. This was documented on the warning, which states that "because of her comments termination will follow." The claimant left work due to legitimate medical reasons and had asked repeatedly to leave. Someone suffering from severe diarrhea should not be denied permission to leave work. The comment the claimant made when she left does not rise to the level of work-connected misconduct under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated September 6, 2007, reference 01, is affirmed. 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/pjs