

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARILYN DUNKELBERGER
Claimant

APPEAL NO: 08A-UI-06310-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

**OC: 05-11-08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 26, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 31, 2008. The claimant participated in the hearing with Attorney James Peters. Teresa Zuke, Area Supervisor, 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 full-time store manager for Caseys Marketing from June 19, 2003 to May 15, 2008. The claimant received a corrective action report March 10, 2008, after a large sum of money was missing and the police became involved. While reviewing the security videos the police indicated to the claimant they believed one employee was responsible for the theft but that most employees were taking lottery tickets. The claimant asked the employee why the police would say that and the employee did not respond. The area supervisor gave the claimant permission to call the employee at home and come in to look for the missing money which was found as there has been a mix-up from the night before. On April 24, 2008, an irate customer entered the store. He had passed a bad check there previously and was on the bad check list. He also said that one of the employer's competitors had gas ten cents cheaper and asked if Caseys matched gas prices. The claimant said, "Yes we do" and the customer accused her of price fixing. She called the Area Supervisor about the bad check situation and she advised letting the customer write a check and give him a track a check form. The customer became very belligerent and because the store was busy and she was somewhat afraid of the customer she did not take him away from the other customers when talking to him about the check, an error she now says she would do differently. She was not rude to the customer and had never been told to take a customer away from the other customers at the counter when similar situations occurred. All disciplinary actions go through the human resources department and human resources decided to give the claimant a written counseling

for her actions. On May 14, 2008, the claimant received a corrective action after making a comment to the third person in line for promotion who was applying for the assistant manager's position that she wanted someone "Young and spry," for the position because that employee suffers from a physical ailment. The other person took offense and before she could complain to management the claimant apologized to her and went on to recommend her for the position which she was then hired for. The employer determined the claimant's comments amounted to harassment and terminated her 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:

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 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). While the employer cited three incidents of misconduct, none standing alone would equal misconduct in culpability. Even

taken in total, the events do not meet the definition of disqualifying job misconduct as defined by Iowa law. Regarding the March 10, 2008, situation the police told the claimant it suspected another employee of stealing after viewing the video and she continued to ask a few more questions of that employee, something that doesn't seem unreasonable in light of the circumstances and in her capacity as store manager. With regard to the May 14, 2008, incident the claimant might have taken the unsatisfied customer to the side but he was so enraged she was afraid to leave the crowd around the register to take him aside and she had never been told she had to do so by the employer. The final incident consisted of the claimant commenting that she wanted someone "young and spry" for the position to the applicant who had some physical disabilities. The claimant meant she would like the store to hire some younger workers who could do the cleaning and other similar type work and later apologized to the employee she made the remark to and recommended her for the position. The claimant made some errors in judgment but none that rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 26, 2008, 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/pjs