

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOAN C BEAN

Claimant

APPEAL NO. 09A-UI-18176-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

**Original Claim: 11/01/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's November 24, 2009 decision (reference 01) that concluded Joan C. Bean (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 13, 2010. The claimant participated in the hearing and was represented by Tom Currie, attorney at law. Connie Sublette appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 24, 2001. Since about June 2002 she worked full-time as a store manager, and since about 2007 had been at the employer's Hills, Iowa store. Her last day of work was November 3, 2009. The employer discharged her on that date. The reason asserted for the discharge was insubordination.

On November 2 the claimant had a dispute with the store's assistant manager, with whom she had prior issues. On that date, the assistant manager had been visiting with her former mother-in-law, who had come into the store apparently as a customer. While the discussion appeared to initially be amicable, at the end the claimant heard the assistant manager screaming at the customer/former mother-in-law, yelling at her to "get out, get out, get out!" and using vulgar language. As a result of this incident, the claimant had intended to discharge the assistant manager, a decision normally within her discretion.

However, Ms. Sublette, the area supervisor, intervened in the matter and arranged a meeting between the three of them for November 3. During the meeting, the claimant was not willing to alter her opinion that the assistant manager be discharged, and was not amiable toward the assistant manager. After the assistant manager left, the claimant and Ms. Sublette had further

discussion in the office about the situation, behind a closed door, in which the claimant continued to assert that her decision to discharge the assistant manager should be supported. She did somewhat raise her voice and commented that Ms. Sublette was being unfair, that she should stay out of the matter and allow the claimant to run the store as she saw fit. Ms. Sublette felt that the claimant's voice was raised to the point of yelling, and reported that a clerk told her that she and a customer outside the office near the counter could hear what the claimant was saying. The claimant spoke to the same clerk herself, and reported that the clerk indicated she could not hear what was being said but only that she heard intense discussion.

Because of the employer's conclusion that the claimant's conduct during the meeting with Ms. Sublette was insubordination, the employer discharged the claimant. There had not been any prior comparable disciplinary issues regarding the claimant, only a verbal warning for a dress code issue.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the conclusion that the claimant had been insubordinate toward Ms. Sublette in their meeting on November 3. Under the circumstances of this case, the claimant's behavior was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good-faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's November 24, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw