

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MYRNA J MEIER
Claimant

APPEAL NO. 10A-UI-17286-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 11/14/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 7, 2010, reference 01, that denied unemployment insurance benefits. After due notice was issued, a telephone conference hearing was held on February 7, 2011. The claimant participated personally. Appearing on behalf of the claimant was Mr. Larry Lammers, attorney at law. The employer participated by Ms. Kristy Bowman, store manager.

ISSUE:

At issue is whether the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Myrna Meier was employed by Casey's General Stores from April 30, 2006, until November 15, 2010, when she was discharged from employment. Ms. Meier last held the position of full-time store manager and was paid by salary. Her immediate supervisor was Kristy Bowman.

Ms. Meier was discharged based upon the employer's belief that she had pled "guilty" to a felony drug charge. Under company policy, employees who are convicted of a felony are subject to discharge from employment.

The employer was informed of the charges in February 2010 but elected to allow Ms. Meier to continue in employment. The charges related from conduct away from work during non-working hours with no direct nexus or connection to Casey's General Stores.

It is the claimant's position that she did not plead guilty to a felony but entered into a plea agreement wherein a "deferred judgment" was entered by the court. It is the claimant's contention that the employer was aware of the legal proceedings against the claimant but elected to continue to let her work for a substantial period of time after they had knowledge of the charges. It is the claimant's further position that she was not convicted of a felony and

therefore should not have been discharged or disqualified from the receipt of unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons herein, the administrative law judge concludes that the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

While past acts or warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In this matter, the evidence establishes the employer was aware that Ms. Meier had been charged with an off-duty, non-work-related drug offense in February 2010 but elected to allow the claimant to continue working. The claimant was discharged based upon information provided by the claimant's ex-husband, who indicated that Ms. Meier been "convicted of a felony."

The evidence in the record establishes the claimant was not convicted of a felony but that a "deferred judgment" was entered. A deferred judgment is "a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court." See Iowa Code section 907.1-1.

The evidence in the record establishes that the claimant was not discharged for any on-the-job conduct but based upon a company rule that provided for the discharge of an employee if that person were convicted of a felony. Based upon the additional evidence available at the time of hearing, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing the claimant was discharged for a current act of misconduct or that, in the alternative, the deferred judgment entered in this case was an adjudication of guilt.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason or for no reason whatsoever, but whether the discharge is disqualifying under the provisions of the Employment Security Act. For the above-stated reasons, the administrative law judge concludes that the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated December 7, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw