

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA A WOLFE
Claimant

APPEAL NO: 09A-UI-10699-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

M & M CONVENIENCE STORE
Employer

OC: 06/14/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Melissa A. Wolfe (claimant) appealed a representative's July 21, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of M & M Convenience Stores (employer) would not be charged because she had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 15, 2009. The claimant participated in the hearing with her attorney, Alex Kornya. Stephen Belay, attorney at law, appeared on the employer's behalf. Jeff Snyder, the manager, testified 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2007. She worked about 30 hours a week as a cook and deli worker. During the catering season, about 50 percent of her work was preparing and cooking food for the employer's catering business. During the winter months, only about 30 percent of her time involved cooking and preparing food for the employer's catering business. When the claimant started, the employee who had worked five years for the employer trained the claimant. This employee continued to come in and help with catering functions until November 2008.

During her employment, the employer talked to the claimant about issues or work-related problems as they arose. On February 21, 2009, the employer had to throw away \$150.00 to \$200.00 of turkey tenders because the claimant had not precooked them correctly. Prior to February 2008, the former employee made the turkey tenders. This was the first time the claimant prepared turkey tenders. The claimant precooked the turkey tenders, but concluded she had not cooked them along enough. After she had precooked them, Snyder discovered they were unusable. He had to throw them away and substituted another item for the customer. This customer was pleased with substitution. When Snyder talked to the claimant about this

problem, she offered to pay for the food he had to throw away. He did not accept this offer and indicated he wanted her to learn from this mistake.

There were not any major problems until May 24. On May 24, there were several orders of barbeque pork and roast pork. As the claimant finished the orders for these deliveries, she put barbeque sauce on all the pork. One order of roast pork, for a 65th anniversary party, specifically asked that no barbeque sauce be put on the meat. The claimant inadvertently put barbeque sauce on all the orders. The employer delivered the meat with the barbeque sauce to the anniversary party and one of the celebrating spouses was unable to eat the meat.

The employer's order board listed a catering order for May 25. When the claimant left work on May 24, she forgot that May 25 was a holiday. The claimant intended to come in the next day, May 25, and prepare food for this catered event. When Snyder came to work on May 25, he noticed the claimant had not prepared food for this catered event. He called the claimant and she admitted she had forgotten to do this order. Ultimately, the employer learned the catered May 25 order the claimant had not done was not for that day but another weekend. The customer gave the employer the wrong date.

On June 5, the claimant had a number of catering orders to complete. One catered event was for a graduation party. The claimant prepared the food for the graduation party and put the food in the oven. The claimant forgot to turn on the oven. When the claimant left work between 2:00 and 3:00 p.m. she did not realize the oven was not on. The employer called at 4:00 p.m., and learned the oven was not on. He told an employee to turn the oven on high. When the employer delivered the food to the graduation party, it was not hot. The customer was not happy.

On June 12, the employer told the claimant that although she was a good cook and could prepare the food he catered, he no longer trusted her to get the job done. The employer discharged the claimant because she did not complete the work assigned to her and did not complete it satisfactorily. Even though the employer told the claimant another cook was going to be hired, the employer has not replaced the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharged her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The claimant made mistakes, but she did not intentionally fail to do her job satisfactorily. The most recent problems occurred during a very busy catering schedule. Although the claimant was negligent or careless in the most recent incidents, she was not careless or negligent to the extent that she committed work-connected misconduct. Therefore, as of June 14, 2009, the claimant is qualified to receive benefits provide she meets all other eligibility requirements.

DECISION:

The representative's July 21, 2009 decision (reference 01) is reversed. The employer discharged the claimant for business reasons, but claimant did not commit work-connected misconduct. As of June 14, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css