

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY M KLINE
Claimant

APPEAL NO. 08A-UI-05500-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

**OC: 05/11/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's June 3, 2008 decision (reference 01) that concluded Misty Kline (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 25, 2008. The claimant participated personally. The employer participated by Sandy Hawkins, Area Supervisor.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 29, 2007, as a full-time store manager. On March 7, 2008, the employer issued the claimant a written warning after a customer complained about her behavior on January 18, 2008.

On May 12, 2008, the claimant was short staffed. Her assistant manager was supposed to work any uncovered hours. The assistant manager refused. The claimant offered to split the shift with the assistant manager. The assistant manager refused and said she did not want to be the assistant manager any more. The claimant shrugged it off, went to the bank and informed her area supervisor of the situation. The area supervisor agreed with the claimant that the assistant manager should be demoted to cashier.

The claimant returned to the store and found the assistant manager's jacket and purse gone. An employee told the claimant that the assistant manager walked out mumbling that she was going to call the area supervisor. The worker and the claimant thought the assistant manager had walked off the job. The claimant crossed the worker's name off the schedule. The assistant manager returned and screamed about her name being off the schedule. She told the claimant she was signing out and going home at 11:05 a.m. and she would get the claimant fired.

The claimant discussed the events with the area supervisor at 3:00 p.m. At 4:15 p.m. the assistant manager telephoned the claimant. She yelled and screamed and the claimant hung up on her to avoid the verbal abuse. The assistant manager telephoned the area supervisor and said the claimant used vulgarity and spoke to her in an angry tone. The employer terminated the claimant on May 13, 2008. The assistant manager continues to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's June 3, 2008 decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs