

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHON C FOSSUM

Claimant

APPEAL NO: 12A-UI-07614-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/27/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated June 18, 2012, reference 01, that held he was discharged for misconduct on May 29, 2012, and benefits are denied. A telephone hearing was held on July 31, 2012. The claimant, and Attorney, Robert Wilson, participated. Ann Neubauer, Area Supervisor, and David Williams, Representative, participated for the employer. Claimant Exhibits 1 – 5, and Employer Exhibits A & B were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on November 13, 2006 as a cashier, and last worked for the employer as a full-time store manager at a Solon, Iowa store on May 29, 2012. The claimant received an employee handbook with training that contains the policies of the employer. The employer has a non fraternization policy that prohibits social or personal relationships between supervisors and subordinate employees. It also has an anti-harassment or discriminatory behavior policy.

On May 14 claimant hired a part-time female employee and on May 17 began texting her with e-mail messages about social activity with an invitation to dine out. He stated to her it would not be a big deal if she declined. When she questioned whether it was work appropriate, claimant replied not as long as no one found out. The employee shared the text messages with management who referred the matter to supervisor Neubauer. The employee was offended by the messages. She rejected his offer to dine with him. After the rejection, she noted claimant's attitude towards her was unpleasant but claimant made no further advances.

When confronted by the employer claimant admitted sending the text messages and he was aware of the employer non-fraternization policy. Claimant had previously been issued a written

warning on June 27, 2011 for unprofessional behavior toward subordinate employees. He was put on notice that a further incident could lead to employment termination.

The employer management team concluded claimant had violated the non-fraternization policy and in light of the prior warning discharged him on May 29, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The administrative law judge concludes the employer has failed to establish claimant was discharged for a current act of misconduct in connection with employment on May 29, 2012, for a violation of company policy.

The June 27, 2011 warning is not directly related to the claimant conduct for which he was terminated. While claimant knew it was ill-advised to ask out a newly hired employee to dinner, the employer policy does not specifically prohibit it. The claimant's invitation was more of an exercise of poor judgment than an intentional policy violation. The employer non-fraternization policy language applies more to the hiring of an employee than to socialization. It refers to a personal relationship with wording "regularly socialize".

A one-time invitation to dinner in a non-confrontational manner (e-mail) with wording it is no big deal if rejected is not prohibited by the policy. Although the employee believes claimant's attitude towards her after the rejection was different there was no further claimant advance or retaliatory action toward her. Job disqualifying misconduct is not established.

DECISION:

The department decision dated June 18, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on May 29, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs