

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEANN R BEAMAN
Claimant

APPEAL NO: 14A-UI-00738-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12/15/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 16, 2014 determination (reference 02) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for nondisqualifying reasons. The claimant participated at the February 21, 2014 hearing. Jill DeVoogd, the store manager, appeared on the employer's behalf. During the hearing Employer Exhibits One, Three and Four were offered and admitted as evidence. Employer Exhibit Two was offered, but was not admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in January 2008. She worked 15 to 30 hours a week as a donut maker. When the claimant started working, she received a copy of the employer's policies. One policy informed the claimant that the use of profanity violated the employer's code of business conduct.

After DeVoogd became the store manager, she gave the claimant a verbal warning on April 2, 2012, for allegedly swearing at a co-worker. Even though the claimant denied the allegation, she signed the April 2, 2012 corrective action document. (Employer Exhibit Three.) The claimant did not receive any other warnings about the way she talked at work until December 4, 2013.

On December 4, DeVoogd was out-of-state. The assistant manager reported to management that the claimant swore twice at her at work. The claimant denied she swore at the assistant manager. After the assistant manager yelled at the claimant and another employee for both being outside at the same time on December 4, the claimant asked the assistant manager to calm down. The claimant tried to explain how and why both employees were outside at the same time.

When DeVoogd returned to work, she was told to discharge the claimant. The employer discharged the claimant on December 7 for using profanity in front of co-workers on December 4, a violation of the employer's code of business conduct. (Employer Exhibit Four.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Since DeVoogd was not at work on December 4, the employer's reliance on hearsay information from employees who did not testify at the hearing cannot be given as much weight as the claimant's testimony. The claimant's testimony is credible. As a result, the evidence does not establish that the claimant swore at work on December 4, 2013, or that she committed a current act of work-connected misconduct. As of December 15, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's January 16, 2014 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but evidence does not establish that the claimant committed a current act of work-connected misconduct. As of December 15, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs