

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE E NORTON
Claimant

APPEAL NO. 12A-UI-07807-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 06/03/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 22, 2012, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 24, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Lisa Morales. Sue Stockbauer participated in the hearing on behalf of the employer with a witness. Exhibit One and Two was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer a cashier-cook from June 30, 2011, to June 5, 2012. She was informed and understood that under the employer's work rules, employees were required to provide courteous customer service. The claimant had received a written warning on January 31 for dropping a dough roller and wrapping an electrical cord around a floor buffer and a verbal in February for gossiping about coworkers. She received a verbal warning in May because a customer felt she was rolling her eyes at her about buying a lottery ticket.

On June 1, a customer complained that the claimant had "given him a look" when he was about to order a pizza that he interpreted as her not wanting to make a pizza for him. In fact, the claimant never deliberately discouraged any customers from ordering a pizza or gave them looks to keep them from ordering food.

On June 5, 2012, the employer discharged the claimant for discourteous conduct toward a customer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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).

No willful and substantial misconduct has been proven in this case. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant very credibly disputed that she had treated any customer rudely on June 1. Her direct testimony outweighs the employer's second-hand evidence to the contrary.

DECISION:

The unemployment insurance decision dated June 22, 2012, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw