

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANA ALINE
Claimant

APPEAL NO: 15A-UI-06287-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 04/19/15
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 21, 2015, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 13, 2015. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Angie Shirley, Store Manager; Carrie King, Second Assistant Manager; and Alisha Weber, Unemployment Insurance Consultant; participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time kitchen employee for Casey's from September 22, 2013 to April 24, 2015. She was discharged for being rude and refusing to serve a customer.

On April 22, 2015, the employer received two separate customer complaints about their experiences with the claimant while attempting to order food from her. Both customers complained to the cashier who instructed each to call the second assistant manager at home and provided them with her cell phone number. The male customer stated he stood at the counter for a long time without the claimant acknowledging his presence and had to speak up to be helped by the claimant. He attempted to order a submarine sandwich, and the claimant acted like it "was a chore," and then asked the claimant to change her gloves because he has allergies and had notice her touching various items in the kitchen while he was waiting for her to wait on him. Once he asked her to change her gloves her attitude worsened and she became belligerent and left the kitchen area as she was pulling off her gloves. The employer also requires employees to change their gloves before making each food item for health purposes.

When the claimant returned and put on new gloves she told a co-worker, "You can help him. I'm not going to help him," at which point the co-worker assisted the customer.

The female customer was standing in line behind the male customer and witnessed the claimant's treatment of him. She stated she was "highly embarrassed" for the male customer. The claimant also refused to wait on her and finally she decided to get food from the warming area and went to the register. She also complained about the claimant's treatment and received the second assistant manager's cell phone number, which she called that evening.

The store manager was advised of the situation and contacted the two customers April 23, 2015. On April 24, 2015, the store manager met with the claimant to discuss her poor customer service April 22, 2015. The claimant would not discuss why she refused to serve the male customer and did not see anything wrong with her behavior that evening.

The store manager had worked with the claimant in the kitchen and observed that she refused to answer the phone, change her gloves, or measure ingredients correctly for pizzas. She failed to demonstrate a friendly attitude or demeanor toward the employer's guests. When the store manager attempted to address these issues with the claimant she refused to speak to the manager who would then have to question her repeatedly in an attempt to get a response.

After reviewing the customer complaints and observing the claimant's lackadaisical and apathetic response, the employer terminated the claimant's employment effective April 24, 2015.

The claimant filed a claim for benefits effective April 19, 2015. She was disqualified for benefits on a separate issue and has not received any benefits to date.

The employer personally participated in the fact-finding interview through the statements of Unemployment Insurance Consultant Alisha Weber. The employer also submitted written documentation prior to the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The employer is a customer service driven business and as such employees are required to provide excellent service to each customer. The claimant's treatment of the male customer April 22, 2015, not only demonstrated a lack of good customer service but was insulting, offensive and rude. Her behavior was so inappropriate and unprofessional that the female customer in line behind him, whom the claimant also refused to acknowledge or serve, was "highly embarrassed" for him.

Customer service is not complicated and the claimant knew, or should have known, how to treat customers ordering food from her. Instead of greeting at least two customers April 22, 2015, with friendliness and helpfulness, the claimant first ignored both customers and then treated the male customer atrociously. There is no excuse for her behavior. As a result, although she had not been warned previously, the employer's decision to terminate her employment April 24, 2015, was justified.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The May 21, 2015, reference 02, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount,

provided she is otherwise eligible. The claimant has not received any benefits to date. Consequently, there is no overpayment of benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css