IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JADA R HANSON
Claimant

CASEY'S GENERAL STORES
Employer

APPEAL NO. 11A-UI-06682-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03/27/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's decision dated May 10, 2011, reference 03, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on June 14, 2011. The claimant participated personally. The employer participated by Ms. Penni Hewlett, store manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jada Hanson was employed by Casey's General Stores from April 12, 2010, until April 4, 2011, when she was discharged from employment. Ms. Hanson worked as part-time truck unloader/cashier and was generally assigned to work one day per week and was paid by the hour. Her immediate supervisor was Penni Hewlett.

Ms. Hanson was discharged when she failed to report on time for her work shift on April 2, 2011. The employer expected the claimant to arrive at 4:45 a.m. However, Ms. Hanson reasonably believed that she was scheduled to work at 4:45 p.m., because she was working on the Subway side of the work location. That portion of the facility is usually staffed in the evenings. Ms. Hanson had not been required to report at 4:45 a.m. in the past and was unaware that she was expected to report at that time on the day in question.

Because the claimant had received a previous warning, a decision was made to terminate Ms. Hanson from employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is not.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

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 upon such past acts. The termination of employment must be based upon a current. See 871 IAC 24.32(8).

The evidence in the record establishes that Ms. Hanson did not intentionally fail to report for scheduled work on the morning of April 2, 2011. The claimant reasonably believed she had been scheduled to work at 4:45 p.m. that afternoon and planned on reporting to work at that

time. Because of the work assignment that was given to the claimant in conjunction with the scheduling, the claimant concluded that she was working the afternoon shift because she had not worked the early morning shift in the past and was aware that the Subway side of the work location generally required afternoon or evening scheduling.

The question before the administrative law judge is not whether the employer has a right to discharge a worker for this reason, but whether the discharge is disqualifying under the provisions of the Employment Security Act. While the decision to terminate Ms. Hanson may have been a sound decision from a management viewpoint, intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 10, 2011, reference 03, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

kjw/kjw