

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CINDY HOKE
Claimant

APPEAL NO. 14A-UI-04304-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 03/30/14
Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated April 16, 2014, (reference 01), which held that Cindy Hoke (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 14, 2014. The claimant participated in the hearing. The employer participated through Store Manager Joe Wilson and Employer Representative Alisha Weber. Employer's Exhibits One and Two were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full time from December 20, 2010, through March 28, 2014, when she was discharged for violating the anti-harassment policy by using profanity towards a co-worker. On March 26, 2014, the claimant reportedly said to a co-worker, "At least I'm not a lazy motherfucker!" She admits she called the co-worker lazy but denied using the word "motherfucker." No first hand witnesses testified in the appeal hearing.

The store manager testified he issued the claimant a previous verbal warning regarding the use of profanity but she denies that. She claims that the assistant manager said to her, "Shut your fucking mouth because you have no idea what the fuck is going on!" The claimant denies cussing at the assistant manager. She also testified that the use of profanity was common in the workplace. No formal warnings were issued to the claimant prior to the termination.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has

discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 28, 2014, for calling a co-worker a "lazy motherfucker." She admits calling her co-worker lazy but denies using profanity. Hearsay testimony is admissible in hearings of this nature. Iowa Code § 17A.14(1) (2011). However, the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct.

Additionally, no formal disciplinary warnings were issued to the claimant prior to her termination. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has not carried its burden of proof. Disqualifying misconduct has not been established. Benefits are allowed.

DECISION:

The unemployment insurance decision dated April 16, 2014, (reference 01), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css