

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY K PETERSON
Claimant

APPEAL NO. 11A-UI-07695-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 05/08/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 2, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing with her witness, Deon Barley. Kevin Temple, the store manager, appeared on the employer's behalf. 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 November 2006. She worked as a full-time assistant manager. The employer has as no loitering policy. The employer's business is a small truck stop where drivers can park, shower, and sleep in their trucks during their mandatory breaks. The employer provides a small lounge where drivers can talk to one another and watch television. The claimant's boyfriend is an over-the-road driver who parks his truck and uses the employer's facility when he is on mandatory time off.

During her employment, the employer gave the claimant warnings for violating the employer's no loitering policy. The claimant received a written warning on September 24, 2010, because her son and boyfriend were at the employer's when the claimant worked. On April 24, the claimant's boyfriend was at the store while she worked her shift. On May 3, the employer gave the claimant a written warning and a three-day suspension for again violating the employer's no-loitering policy. The employer warned the claimant that further violations of the policy would result in her discharge. The employer also told the claimant that her boyfriend was not considered a customer and could only be in the store for an extended time when she worked.

Two employees reported that on May 8, the claimant's boyfriend was at the store before she began working and stayed even after her shift ended. Her boyfriend was on a mandatory

ten-hour break on May 8 and made arrangements to meet another driver at the store. The other driver did trailer swaps with the claimant's boyfriend.

When the claimant's boyfriend was on his mandatory break, he stayed in the lounge area and watched television. A driver, who considered the store his home away from home, did not see the claimant interact with her boyfriend when he was there. Instead, her boyfriend stayed in the lounge area talking to other drivers and watching television. The claimant did her work.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer's no loitering policy was implemented for practical business reasons. Since the employer is a small truck stop, truck drivers stop there during their ten-hour mandatory break. The evidence indicates the claimant's boyfriend was in the lounge area watching television and talking to other drivers when he stopped at the employer's store. The fact he was in the store when the claimant worked does not constitute misconduct unless the claimant talked to him instead of doing her work. Based on the testimony presented during the hearing, the employer did not want the claimant's boyfriend to stay in the store for any extended time, but allowed other truck drivers to stay in the store for extended times. The employer allowed the claimant's boyfriend to park, shower, and buy fuel and food like other drivers, but did not want him in the lounge as other drivers were permitted to do.

Even though other employees reported the May 8 incident, no one with personal knowledge about this incident, other than the claimant, testified at the hearing.. As a result, there is no evidence the claimant did not do her work satisfactorily when her boyfriend was in the lounge on May 8. Since one for the reporting employees was promoted to the claimant's job, the credibility of the report the employer relied upon to discharge the claimant is somewhat suspicious.

While the employer established business reasons for discharging the claimant, the evidence does not establish that she committed work-connected misconduct. As of May 8, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's June 2, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons. These reasons do not, however, constitute work-connected misconduct. As of May 8, 2011, 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/kjw