

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL H PARRAMORE
Claimant

APPEAL NO: 12A-UI-00624-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 3/20/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 9, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. The witnesses the claimant wanted at the hearing were called, but neither person answered their phone. Messages were left for them to contact the Appeals Section, but neither did. Lori Crouch, 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 finds the claimant 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 May 2011 as a full-time evening cook. The claimant understood that when he was ill, the employer required him to find a replacement and if he did not, he had to work.

When the claimant started working, he was trained how to clean the kitchen by an employee who was not working for the employer in December. The employer had talked to him in mid-August about failing to clean the kitchen properly. In early December, the claimant understood what he needed to in the kitchen to do his job satisfactorily. On December 1, the claimant and Cody Brown, an employee, talked about how the claimant's job was going. The claimant was frustrated after learning the assistant manager washed walls in the kitchen. He believed he performed this job satisfactorily. While the claimant talked to Brown and expressed his frustrations about work, the assistant manger came to the store to pick up a pizza. The claimant had not expected her at the store. She overheard his frank comments to Brown. The assistant manager reported that that claimant used profanity at work. When Crouch talked to Brown, he would not comment or verify what the claimant had or had not said. The claimant denied he used profanity while talking to Brown. Only the claimant, Brown and the assistant manager were in the store.

On December 5, the claimant was ill and called to get the phone numbers of employees who could work for him later that day. The claimant called back and talked to the cashier, Jennifer. He was upset when he called and told her to tell the "frickin" manager on duty that he was coming in and would be working with "frickin - bullshit" food. Jennifer immediately reported the claimant's comments to Crouch. She informed Crouch that the claimant had offended her with his comments.

On December 6, Crouch gave the claimant a written warning for the way he talked to Jennifer on a December 5 phone call. The employer also informed the claimant he was discharged for failing to complete his work satisfactorily and for using profanity at work on December 1.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

Even though the employer established business reasons for discharging the claimant, did he commit work-connected misconduct on December 1 or 5? The assistant manager was understandably upset with the claimant after she had to wash kitchen walls that was part of the claimant's job responsibility. Even though Crouch talked to the claimant about the way he cleaned the kitchen in August, the facts do not establish the employer had continued problems with this or talked to him again about this. The first written warning the claimant received for unsatisfactory work performance, cleaning the kitchen properly, was on December 6. Even if the claimant did not clean the kitchen properly, unsatisfactory work performance does not constitute work-connected misconduct.

The assistant manager overheard the claimant express his frustrations in a private conversation to a co-worker. Even if he claimant used some profanity, which he denied, this incident would not establish work connected misconduct. More importantly based on the evidence presented during the hearing, the facts do not establish that the claimant used profanity when he talked to Brown on December 1.

The final incident occurred on December 5. The evidence indicates Jennifer and the claimant did not get along. Since the claimant knew Jennifer did not like him, he should have been

careful in what he said to her. On December 5, the claimant was frustrated, sick and upset that he could not find anyone to work for him and the employer's policy required him to work when he was sick. The claimant's statement was not personally directed at Jennifer. In this instance the claimant used poor judgment, but based on the facts that led to his comment, the December 5 comment does not rise to the level of work-connected misconduct. As of December 4, 2011, the claimant is qualified to receive benefits.

The employer is not one of the claimant's current base period employers. During his current benefit year, March 20, 2011, to March 17, 2012, the employer's account will not be charged.

DECISION:

The representative's January 9, 2012 determination (reference 02) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of December 4, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is not subject to charge during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css