

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUDITH A BELL

Claimant

APPEAL 15A-UI-04423-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/15/15

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 3, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 19, 2015. Claimant participated. Employer participated through Mary Hanrahan, Area Supervisor. Employer's Exhibit One was entered and received into the record. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an assistant manager beginning on September 1, 2007 through March 4, 2015; when she was discharged. On March 4 the claimant was working in the kitchen and was swearing loudly enough that her coworker Lakin, who was working on the cash register, could hear her as well as customers in the store. The next day a customer called in to complain that the claimant had been rude to them over the phone when they were ordering a pizza from her.

The claimant had prior warnings for similar conduct. On September 13, 2013, she was written up for yelling at an employee. She was written up on December 23, 2014 for stopping an employee from down-sizing the donut case because she wanted another employee to get upset and "go off on" her. On January 6, 2015, she was written up for being rude to a new employee on his first day on the job. She was also told not to have her husband come into the store to speak to the manager about disciplinary matters. That final warning specifically put the claimant on notice. It provided: "[T]his will be the last warning of any kind. Any other complaints about you and you will be terminated."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The administrative law judge is persuaded by the employer's evidence that the claimant did engage in rude behavior toward a least one customer and was using profanity while in the kitchen on March 4. She had numerous prior warnings about similar conduct. Claimant's repeated failure to treat others respectfully and her continued use of profanity on the job site after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The April 3, 2015 (reference 01) decision is affirmed. 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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