

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY L MALLANEY
Claimant

APPEAL NO: 09A-UI-17951-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

OC: 11/01/09
Claimant: Appellant (2)

Section 96.5-2 a- Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's November 23, 2009 decision (reference 01) that disqualified her from receiving benefits, and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. A telephone hearing was held on January 11, 2010. The claimant participated in the hearing. Jeremy Hinogte, an assistant manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2008. The claimant worked an average of 30 hours a week at the grill preparing food. The claimant also trained crew members.

At various times, the claimant made comments at work about how she did not care about problems with her work performance. After Hinogte started, he asked the claimant to keep her work area clean. He noticed that when she wiped her counter, she wiped food onto the floor instead of throwing it away in the garbage. At various times, the store manager talked to the claimant about her attitude, but the employer did not tell the claimant that her job was in jeopardy. On October 23, 2009, the claimant received a write-up for talking back to a manager the day before. The employer also sent her home early on October 23 because of the incident with a manager.

The claimant talked to the manager earlier about taking time off when a friend delivered her baby. The claimant's friend had a small child and the claimant agreed to take care of the child when the friend's baby was born. The claimant notified the employer on Sunday, October 25, that she was unable to work. The claimant's friend had her baby and the claimant took care of her small child on October 25.

On Monday, October 26, the employer discharged the claimant for her continued poor work attitude which was evident when she did not work the day before.

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 section 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).

Although the employer disciplined the claimant for talking back to a manager or displaying a poor attitude on October 23, the facts indicate this was the first written warning the claimant received for this problem. When the claimant did not work as scheduled on October 25, the employer concluded this was yet another example of the claimant's poor work attitude. However, the facts indicate the claimant talked to management earlier and told them she would have to take time off when a friend had her baby. The evidence does not establish the employer warned the claimant that she could not do this.

The employer may have had justifiable business reasons for discharging the claimant. The evidence presented during the hearing, does not establish that the claimant committed work-connected misconduct. Therefore, as of November 1, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's November 23, 2009 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected

misconduct. As of November 1, 2009, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs