

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A MONTALVO
Claimant

APPEAL NO: 09A-UI-07167-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/05/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer)) appealed a representative's April 29, 2009 decision (reference 01) that concluded Patricia A. Montalvo (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2009. The claimant participated in the hearing. Tammy Viet 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 7, 2007. Since about September 2008 she worked full time as an assistant manager at the employer's Hampton, Iowa store. Her last day of work was April 5, 2009. The employer discharged her on April 7. The reason asserted for the discharge was not properly securing a deposit.

On April 5 the claimant worked a split shift, working some of her regular hours in the morning from about 5:00 a.m. to 10:30 a.m., and then covering another shift from 4:00 p.m. to 11:00 p.m. One of her morning duties was to prepare the bank deposit from the prior day and make the deposit. She did prepare the deposit, but while she put it into the safe, she put it into the bottom main safe that was generally accessible to any employee, rather than into the upper management secured portion of the safe. She had intended on adding some "drawer bank" monies to the deposit when she returned later that day and had intended on dropping off the deposit at the bank then also when she returned later that day. She put the deposit into the bottom safe so it would be easier for her access and remember. However, she did forget about making the deposit, so it remained in the bottom safe until Ms. Viet found it the next morning.

On about April 7 Ms. Viet had counseled the claimant about needing to make the weekend deposits, and had indicated that failing to make the deposits was a “major thing” in the company’s eyes. There had not been a prior issue with the claimant failing to secure the deposit in the upper management portion of the safe.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her leaving the deposit which she failed to deposit at the bank in the less secured lower safe rather than the upper management secured portion of the safe. Under the circumstances of this case, the claimant’s failure was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and was a good faith error in judgment or discretion. While the employer had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 29, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs