

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANICE S ANDERSON

Claimant

APPEAL NO. 12A-UI-00465-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/04/11

Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's decision dated January 5, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 9, 2012. Claimant participated. The employer participated by Ms. Patricia Hodgson, Store Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Janice Anderson was employed by Casey's Marketing Company from August 2, 2004 until December 7, 2011 when she was discharged from employment. Ms. Anderson was most recently employed as a full-time assistant manager and was paid by the hour. Her immediate supervisor was Patricia Hodgson.

Ms. Anderson was discharged on December 7, 2011 during a meeting in which the claimant indicated that she was not willing to perform the general duties associated with her position of assistant manager.

In the past Ms. Anderson had been repeatedly counseled by her manager to place more emphasis on customer service and cheerfully greeting and thanking company patrons. In spite of the manager's repeated requests, Ms. Anderson generally was unwilling to greet customers if she was occupied with other customers or engaged in other activities such as reading the newspaper. The manager had noted on security tapes that Ms. Anderson displayed a different demeanor towards her friends or her Avon customers who came into the store but that she lacked the requisite amount of friendliness towards customers who she was not personally

associated with. The subject of the claimant's customer service, therefore, became an ongoing issue between the parties.

Shortly before the claimant's discharge the employer made a management decision to remove the previous contractual arrangement for doing the store's laundry from Ms. Anderson. The employer had noted that the claimant's prices for doing the store's laundry had escalated and the employer, therefore, planned to seek a different way of having the laundry done. When Ms. Anderson returned the remainder of the laundry from her residence that belonged to Casey's General Stores, she also brought in a note stating, "Since my customer service is so damn bad out, I want to work just in the kitchen in the future." Based upon the claimant's unwillingness to change her demeanor towards customers and the contents of the note, the store manager and area manager decided to meet with Ms. Anderson.

During the meeting, Ms. Anderson was asked by the district manager about the note that she had presented. Claimant was reminded that as an assistant manager she was required to perform duties of various kinds and in every portion of the facility. When Ms. Anderson re-affirmed her intention to work only in the kitchen in the future, she was discharged from employment. Ms. Anderson walked out during the discharge process.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

An employer has the right to expect decency and civility from its employees. An employee's use of profanity or offensive language in a confrontational or disrespectful context may be recognized as misconduct disqualifying the employee from the receipt of unemployment insurance benefits. See Henecke v. Iowa Department of Job Service, 533 N.W.2d 573 (Iowa App. 1995).

In this matter the claimant began the chain of events that resulted in her termination by being unwilling to extend friendliness and greeting company customers although she had been repeatedly reminded and warned to do so. When the company made a management decision to change the method of having its laundry done, Ms. Anderson took the opportunity to make a confrontational, disrespectful statement to her employer by letter indicating in effect that she did not agree with her manager's assessment of her customer satisfaction skills and stating an unwillingness to perform the duties that were generally required of a person that held the position of assistant manager. When the claimant re-affirmed her position to only work in the kitchen after being reminded that her duties required her to work in all portions of the facility, the claimant was discharged from employment. The administrative law judge concludes based upon the totality of the evidence in the record that the claimant's conduct showed a willful disregard for the employer's interests and standards of behavior and thus was disqualifying under the provisions of the Employment Security Law.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 5, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The issue of whether claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs