

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE SAUNDERS

Claimant

APPEAL NO. 16A-UI-00024-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 11/15/15

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's December 22, 2015 (reference 02) decision that concluded Michelle Sauders (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 25, 2016. The claimant was represented by Emilie Roth Richardson, Attorney at Law, and participated personally and through Heather Price, former co-worker. The employer participated by Christine Teasdale, Store Manager, and Alisha Weber, Unemployment Insurance Consultant. The claimant offered and Exhibits A, B, and C were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 24, 2013 as a full-time store employee. The claimant does not remember receiving the employer's handbook on September 24, 2013. On August 8, 2014, the claimant suffered a work injury and worked with restrictions through the end of her employment.

The claimant took approved vacation from December 8 through 13, 2014. She requested and was granted medical leave from December 14 through 19, 2014. On December 16, 2015, the claimant saw the employer's physician. The physician continued the claimant's restrictions and talked to her about possible surgery. On December 16, 2014, the claimant contacted her manager and relayed the information. The manager told the claimant she would not put her back on the schedule just to take her off the schedule if the claimant were scheduled for surgery. The manager told the general manager the claimant quit work to take other employment.

On December 19, 2014, the claimant discovered the workers' compensation carrier did not recommend surgery. She called the manager about working. The manager told the claimant to call the general manager but would not give the claimant the general manager's telephone number because the claimant was no longer considered an employee. The manager suggested the claimant drop in from time to time and try to catch the general manager. The claimant tried for weeks. The claimant finally saw him in February 2015. The general manager turned his back on the claimant, walked into his office, and shut the door.

The claimant filed for unemployment insurance benefits with an effective date of November 15, 2015. The employer participated personally at the fact-finding interview on December 16, 2015, by Alisha Weber.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). There is insufficient evidence that the claimant intended to leave work. The separation must be analyzed as an involuntary separation.

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 22, 2015 (reference 02) decision is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

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