

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LORA L HAHN

Claimant

APPEAL NO. 14A-UI-01112-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/22/13

Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Casey's, filed an appeal from a decision dated January 24, 2014, reference 01. The decision allowed benefits to the claimant, Lora Hahn. After due notice was issued a hearing was held by telephone conference call on February 24, 2014. The claimant participated on her own behalf. The employer participated by Store Manager Sandy Hawkins and Unemployment Insurance Consultant.

ISSUE:

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

FINDINGS OF FACT:

Lora Hahn was employed by Casey's from December 21, 2009 until December 23, 2013 as a full-time store manager. On December 20, 2013, another employee, Krista Gerischer, called Area Supervisor Sandy Hawkins to complain about Ms. Hahn.

Ms. Gerischer had asked to leave early and followed Ms. Hahn out to her car in the parking lot, raising her voice and berating her for not responding to the request. The employee then went back into the store and shortly afterward the claimant followed and asked her to come into the office to discuss the matter. Words were exchanged and Ms. Gerischer left the store and called Area Supervisor Sandy Hawkins.

Ms. Hawkins arrived at the store a quarter of an hour later and listened to the comments from both employees, and also interviewed two other employees who were present. All generally agreed there had been "yelling" going on. The claimant had told Ms. Gerischer she did not want to be spoken to in that manner and the response was further yelling and obscenities.

The employer felt the claimant had not handled the situation appropriately, that she should have called the police and that instead of interacting with her subordinate, should have waited on customers who were standing in line. Both Ms. Hahn and Ms. Gerischer were discharged on December 23, 2013, by Ms. Hawkins.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 claimant's testimony differs slightly, but significantly, from that of the employer. The question of who was "yelling" at whom is the issue and Ms. Hahn's version of the event has Ms. Gerischer being the verbally aggressive one and the tirade may have included inappropriate physical contact. The employer's witness does not have firsthand knowledge of the events.

The employer asserted the claimant did not handle the situation appropriately by calling the police, but at the same time asserted Ms. Hahn did not wait on the customers waiting in line. The administrative law judge considers that if the police had been called the customers would still have not been waited on while the claimant dealt with the law enforcement officers.

The two other witnesses were not present to testify as to the exact course of events and who said what to whom. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which she was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated January 24, 2014, reference 01, is affirmed. Lora Hahn is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeyer
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs