

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURIE A BEAN
Claimant

APPEAL NO. 11A-UI-11783-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/07/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Laurie A. Bean filed a timely appeal from an unemployment insurance decision dated September 2, 2011, reference 01, that disqualified her for benefits. Due notice was issued for a telephone hearing to be held November 18, 2011. Her former employer, Casey's Marketing Company, notified the administrative law judge in writing that it did not intend to participate in the hearing. In lieu of testimony, the claimant's attorney submitted an affidavit by Ms. Bean that has been included in the record as Exhibit A.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Laurie A. Bean was employed as manager of the Casey's Marketing Company store in Columbus Junction, Iowa, at the time she was discharged on August 9, 2011. The stated reason for discharge was that Ms. Bean was facebooking about employees while on duty the previous week. Ms. Bean had not been facebooking while on duty. She had not commented on Casey's employees on her Facebook account while off duty.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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 employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate. The claimant's evidence, the only evidence in this record, establishes that she did not use her Facebook account while on duty and that she did not post comments about company employees even when she was off duty. Based upon the evidence in this record, no disqualification may be imposed.

DECISION:

The unemployment insurance decision dated September 2, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw