

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISSY S CORONADO
Claimant

APPEAL NO: 13A-UI-09728-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANDA EXPRESS INC
Employer

OC: 07/21/13
Claimant: Respondent (1)

Iowa Code 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 14, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Ike Rocha was present to interpret the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2012. She worked full time at the counter and as a cashier. Prior to July 18, 2013, the claimant's job was not in jeopardy.

On July 18, 2013, about two minutes before the employer closed for the night, a customer wanted to order food. The claimant tried to explain that the kitchen was closed, but there were some food items the customer could still order. The customer would not listen to the claimant and became rude. When the customer pulled up to the window, the customer acted intoxicated. The customer accused the claimant of doing the same thing to her the week before even though the claimant had been out-of-state the week before. The claimant called the assistant manager to the window. When the assistant manager went to the cash register, the claimant told him that this customer was a B____.

The next morning, the claimant reported the incident to the manager. After he reviewed the video of the incident, he told the claimant there was nothing on the video that created any red flags and the claimant had acted calmly toward a very rude customer. The video does not record any audio.

On July 25, 2013, the employer discharged the claimant because she committed misconduct. The claimant understood she was discharged because she told the manager on duty the customer was a B____. The claimant did not make this comment to the customer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

On July 18, the claimant talked calmly to a very rude customer. The facts do not establish that the claimant called the customer a B____. Instead, the claimant only told the manager-on-duty that she thought this customer was a B____. The evidence does not establish that the customer heard the claimant or what prompted the employer to discharge the claimant when the video showed that she acted calmly when the customer swore at the claimant and was extremely rude. The claimant used poor judgment when she made a personal comment about the customer to the manager-on-duty, but the facts do not establish the claimant committed work-connected misconduct. Therefore, as of July 21, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's August 14, 2013 determination (reference 01) is affirmed. The employer discharged the claimant, but the evidence does not establish that the claimant committed work-connected misconduct. As of July 21, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs