

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER J CHIDESTER
Claimant

APPEAL NO. 12A-UI-01038-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 12/18/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from an unemployment insurance decision dated January 18, 2012, reference 01, that allowed benefits to Heather J. Chidester. After due notice was issued, a telephone hearing was held February 23, 2012, with Ms. Chidester participating and presenting additional testimony by Nick Long. Area Supervisor Deb Williams participated for the employer.

ISSUES:

Was the separation a quit or a discharge?

Was the separation a disqualifying event?

FINDINGS OF FACT:

Heather J. Chidester was employed as a part-time clerk and pizza maker by Casey's Marketing Company from March 16, 2010, until she was discharged November 2, 2011. She was discharged by then store manager Pat Gibbons on November 2, after Ms. Chidester had asked that a reprimand being given by Ms. Gibbons be moved off the sales floor to a more private back room.

After Ms. Gibbons declined Ms. Chidester's request, Ms. Chidester stepped outside to defuse the situation. As regular customer Nick Long approached the store, Ms. Gibbons stepped outside the door and told Ms. Chidester that she was discharged.

Ms. Chidester spoke with Area Supervisor Deb Williams two days later. The parties have differing recollections of that conversation. Ms. Gibbons did not participate in the hearing because she had been discharged by the employer in December.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this case is to characterize the separation. The claimant provided a disinterested witness—that is, one who is not an employee of the business or a close personal friend of the claimant. He testified without contradiction that he heard Ms. Gibbons discharge Ms. Chidester. This testimony is the clearest, contemporary indication of the nature of the separation.

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. The evidence does not establish a current act of misconduct leading directly to the discharge. From the evidence, the administrative law judge concludes that the final incident was Ms. Chidester's request that the reprimand be moved from a public location to a private location. No disqualification may be imposed based upon the evidence in this record.

DECISION:

The unemployment insurance decision dated January 18, 2012, reference 01, is affirmed. 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