

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARCIE J MASSEY**  
Claimant

**APPEAL NO. 07A-UI-03719-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VETERANS OF FOREIGN WARS  
POST 2237**  
Employer

**OC: 03/11/07 R: 03  
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Darcie Massey, filed an appeal from a decision dated April 2, 2007, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on April 25, 2007. The claimant participated on her own behalf and was represented by Michelle Hoyt-Swanstrom. The employer, VFW, participated by Commander Jim Lamphier.

**ISSUE:**

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

**FINDINGS OF FACT:**

Darcie Massey was employed by VFW from May 2005 until March 13, 2007, as a full-time canteen manager. On February 28, 2007, Commander Jim Lamphier received information from the claimant's ex-boyfriend, Jim Esparza, that he and the claimant had, in the past, taken cigarettes and beer from the canteen without paying for them.

The employer did no investigation at all on the allegations, nor even questioned the accuser's motivations even though the claimant had a restraining order against Mr. Esparza at the time. Instead a special meeting was held on March 13, 2007, at which a letter was read to the claimant outlining all the allegations against her. At the end of the reading she was told she had to option to quit or be fired and was not afforded any opportunity to respond to the allegations. When she said she would not quit she was discharged.

## 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). In the present case the employer has failed to present any evidence whatsoever except hearsay from a hostile ex-boyfriend of the claimant. No investigation was done on the allegations, not an inventory, no questioning of the claimant or other possible witnesses, nothing to substantiate the accusations. The claimant had denied any wrongdoing and the employer has not presented any facts or testimony as rebuttal. It has failed to meet its burden of proof and disqualification may not be imposed.

**DECISION:**

The representative's decision of April 2, 2007, reference 01, is reversed. Darcie Massey is qualified for benefits, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs