

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEALENE B BROWN

Claimant

APPEAL NO: 09A-UI-10089-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/10/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 1, 2009, reference 02, that held the claimant was not discharged for misconduct on May 12, 2009, and benefits are allowed. A telephone hearing was held on August 11, 2009. The claimant, and her Attorney, Michael Carpenter, participated. Alyce Smolsky, Representative, and Millie Vroeth, Area Supervisor, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on June 19, 2007, and last worked for the employer as a full-time assistant manager on May 14, 2009. The claimant was supervised by store manager Shane Peters, and Area Supervisor, Millie Vroeth.

The claimant was raised in the southern part of the United States (Texas), and as part of the southern culture, she referred to people using a moniker "like sweetie, honey, sugar or darling". There were some established customers who expressed to the claimant that they liked the generic name references.

The employer received a complaint who did not like having the claimant refer to the customer as sweetie or honey or sugar. Manager Peters and Supervisor Vroeth counseled the claimant about the complaint on May 7, 2009, and requested that she refrain from using the references when dealing with customers.

Several days later, the claimant was talking to a deputy sheriff who was in the store as a customer. She had an acquaintance who experienced a criminal matter involving an assault, and she inquired about the cost by using as an example what it might be should she slap her supervisor across the face. The deputy later advised manager Peters about what the claimant

said, and Peters repeated the incident to supervisor Vroeth. The employer confronted the claimant who acknowledged the deputy inquiry, but she denied her statement was a threat or intention to slap her supervisor. The employer discharged the claimant for violation of company policy by revealing company business in light of the verbal warning.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 14, 2009.

The employer did not offer as a reason for discharge that the claimant threatened a supervisor with assault or expressed any intent to do so to a law enforcement deputy. The claimant was given an appropriate verbal warning about loosely using endearment terms when referring to customers, but this conduct is unrelated to the most recent incident that lead to discharge.

The claimant used poor judgment in asking a deputy about the cost of a slap in the face using her supervisor as an example to understand the consequences of such an occurrence. A reasonable inference may be made that the deputy was concerned about the claimant's statement to the extent he reported to manager Peters, but the incident is not directly related to the claimant revealing company business that is the reason offered by the employer for discharge.

DECISION:

The department decision dated July 1, 2009, reference 02, is affirmed. The claimant was not discharged for misconduct on May 14, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs