

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SUSAN J MCPHERSON
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 15A-UI-00781-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/28/14
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 9, 2015, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 4, 2015 in person. Claimant participated personally. Employer participated by Katie Brunning. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 26, 2014. Employer discharged claimant on December 27, 2014 because claimant was using profanity and acting in an outrageous manner to her coworkers and around customers.

Claimant gave an account of her time working for employer. Claimant had, on numerous occasions, complained to supervisors of her treatment by her store manager and coworkers. When her area supervisor did not act, she went to human resources with complaints on three occasions, but saw no results. Claimant complained of differential treatment by her manager, to no avail. Claimant's manager did acknowledge that claimant was a hard worker and did her job well.

Claimant felt that she was treated differently than her coworkers. On Christmas Eve, claimant was asked on that day to stay two hours beyond her scheduled work hours to close down the kitchen. Others were not punished for missing mandatory meetings when claimant felt she would have been.

On claimant's last day of work, she had greeted her manager asking how Christmas had gone. The manager said that she thought the question was asked in a snarky manner and just dismissed it. Later, when claimant had a disagreement with a coworker about some labels for a

product, her manager stated, “for the third time...” even though the manager was being asked the question for the first time. Later that day claimant, when trying to follow orders given by the manager, claimant suggested to her coworker that pizza pans were to be placed where the manager wanted them. The coworker suggested that she did not care, and was going to do things how she wanted.

Claimant became very upset and went on a multi-minute tirade. In the middle of the tirade, a coworker told claimant to go home. Claimant continued working, and continued being upset. Claimant was upset and used loud obscenities in front of customers who were at the store. Claimant admitted to using foul language. Claimant's manager then told claimant to go home. Claimant then left the store and went home. When claimant returned to work the next day for her shift, she was told that she had been fired.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. Claimant here had no prior warnings for her actions, and had not violated any policies in the past. But the incident in itself, while short in nature, certainly shows a claimant that was not acting in the best interests of the employer. In using foul language in front of customers, claimant has created a situation where she has committed misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning foul language, threats, and inappropriate behavior. Claimant signed off on a company document indicating that she had been given an opportunity to alert herself to company policies, but employer never specifically warned claimant as to the particular actions.

The last incident, which brought about the discharge, constitutes misconduct because claimant's inappropriate behavior was far outside of the norm of acceptable actions. Had claimant chosen to quit her employment as a result of the actions that led to the outburst, it would have been a close call as to whether that quit was brought about by employer's actions. But that was not the case in this matter. Here claimant exploded in an obscenity laced tirade that must be labeled as disqualifying misconduct. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated January 9, 2015, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs