

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SELENA MILLER

Claimant

APPEAL NO. 08A-UI-03617-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

**OC: 04/04/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 4, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 29, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Danielle Lange participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a cashier/kitchen worker from January 11, 2008, to March 12, 2008. The claimant resides outside Muscatine, Iowa, and was hired to work in the Muscatine store. Danielle Lange was the claimant's supervisor in the Muscatine store.

On March 10, 11, and 12, the claimant was asked to work in the West Liberty store because they were shorthanded. The West Liberty store was about 25 miles from the claimant's home. On March 12, the claimant discovered before leaving for work that morning that her uniform was still in the washer. The claimant had noticed other employees who were wearing jeans at work on March 10 and 11, which was not proper under the dress code. Also, she had worn a sweater over her uniform in the presence of the manager those two days as well. As a result, the claimant did not believe she would get in trouble for wearing jeans and a sweater that day. After working about a half hour that morning, the manager told her that she was out of uniform. The claimant explained what had happened with her uniform. The manager told her to home and change and come back to work. The claimant told the manager that if she left, she would not be returning that day because she did not have the gas money to drive back and forth to work. The manager then told her that she needed to talk to Lange. The claimant called Lange and explained the situation. Lange told her that if she did not change and return to work, she would probably get a write up. While the claimant was driving home, Lange called her and told her that if she did not return to the store in uniform, she would be fired. The claimant again insisted

that she did not have the money for gas. Lange then told her that she was discharged. The claimant had not received any previous discipline.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant was sent home to change even though the manager had previously allowed other

employees to work out of uniform. The claimant's failure to return to work that day was therefore understandable. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated April 4, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css