

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JESSICA WELLS**

Claimant

**APPEAL 18A-UI-02056-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 01/07/18**

**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

Jessica Wells (claimant) filed an appeal from the February 9, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination Casey's Marketing Company (employer) discharged her for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing began on March 12, 2018 and concluded on March 16, 2018. The claimant participated. The employer participated through Store Manager Darla Friedrichsen. The Employer's Exhibit 1 was admitted into the record without objection.

**ISSUE:**

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds the facts of this case are largely uncontested. The claimant was employed full-time beginning on April 20, 2015. In the summer of 2017, she was promoted to Assistant Manager. The claimant's last day worked was December 25, 2017.

On Christmas Day 2016, the employer had issues with employees not showing up for work or leaving their shift early due to the holiday. The claimant was the highest ranking manager scheduled in the store on Christmas Day 2017. She was scheduled to work from 9:00 a.m. to 3:00 p.m. Store Manager Darla Friedrichsen directed the claimant to share with employees that if they did not come in for their shift on the holiday or if they left early, they would be discharged.

On December 25, 2017, the claimant reported to work and had to open the store, which was not a job task she frequently performed as the store was normally open 24 hours a day, seven days a week. She had difficulty and contacted Friedrichsen to ask questions. She was expected to have the money counting and recording completed by 10:00 a.m. so the money could be

deposited in the night drop at the bank. After completing her counts, the claimant was off by \$500.00. She contacted Friedrichsen who instructed her to recount the money as there was no way the store was off by that much. The claimant agreed, but then became frustrated. The claimant put the money and books into the safe and left early, at 1:10 p.m., without notifying Friedrichsen.

At 2:30 p.m., Friedrichsen stopped by the store, discovered the claimant had left without completing the financials, and she completed them. The missing money had been placed in the wrong bag and everything balanced. After balancing the financials, she left. Jacob, an employee who was employed through a program for persons with mental or physical impairments and worked in the kitchen, left work at 3:00 p.m. when he was scheduled to work until 4:00 p.m. Jacob remained employed as it was the claimant's duty to notify employees that they would be discharged if they left early and she was not there to notify him that his job was in jeopardy.

The claimant was next scheduled to work on December 27, 2017. She called Friedrichsen before the start of her shift to ask if she still had a job. Friedrichsen informed her that her employment had ended.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The employer has not established that the claimant indicated an intention to quit. The claimant contacted Friedrichsen to ask if she still had a job which indicates she did not intend to sever the employment relationship. Additionally, the claimant did not have the option of remaining employed. Therefore, the case will be analyzed as a discharge.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer had a stated interest in having its employees show up for work on the holiday and work their entire scheduled shift. The claimant was the highest ranking manager on duty on December 25, 2017. She was responsible for making sure the employees worked the hours for which they were scheduled. The claimant left her shift early without notification to the Store Manager. The claimant's conduct was a deliberate disregard of the employer's interest. Benefits are denied.

Typically, disparate application of a policy will not result in a disqualification from unemployment insurance benefits. However, in this case Jacob, who left early and remained employed, is not similarly situated to the claimant. The claimant was a member of management and Jacob was not. Additionally, the claimant had received notice that her job was in jeopardy if she left early; whereas, Jacob did not. Therefore, the claimant's argument that Jacob was treated more favorably and she should be allowed benefits is not persuasive.

**DECISION:**

The February 9, 2018, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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