

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAULA J HAMANN**  
Claimant

**APPEAL NO. 14A-UI-01675-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 07/14/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Casey's Marketing Company filed a timely appeal from a representative's decision dated February 4, 2014, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on March 6, 2014. Claimant participated. Participating as witnesses for the employer were Alicia Weber, Hearing Representative of Equifax Company; Nicole Collins, Store Manager; Nelly Edwards, Hourly Employee; and Janet Streets, Pizza Maker.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all the evidence in the record, the administrative law judge finds: Paula Hamann was employed by Casey's Marketing Company from August 9, 2013 until January 7, 2014 when she was discharged from employment. Ms. Hamann was employed as a part-time pizza maker/floater and was paid by the hour. Her immediate supervisor was the store manager, Nicole Collins.

On December 31, 2013, a meeting was held between the store manager, the claimant and Janet Streets at the claimant's request. Ms. Hamann had requested the meeting to clarify allegations that she was having difficulty working with other employees. During the meeting the bickering between the claimant and Ms. Streets was discussed by the manager as well as the parties themselves. At the conclusion of the meeting both Ms. Streets and the claimant apologized for their conduct and Ms. Collins warned them not to engage in further bickering in the future. Following the meeting both Ms. Streets and the claimant abided by the warning that had been given to them. Subsequently, Ms. Collins reviewed the matter with another store manager and concluded that she should have discharged Ms. Hamann because the claimant had made a comment at the conclusion of the December 31 meeting stating that the meeting may have been a "waste of time." The claimant was therefore discharged seven days after the meeting although no further incidents of misconduct had taken place.

## 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.

871 IAC 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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 upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

In the case at hand the claimant and another employee had been called to a meeting to discuss bickering between the parties. During the meeting both the claimant and the other employee were warned not to engage in that conduct in the future and both employees apologized for their past conduct. The claimant was not discharged at the conclusion of the meeting for any conduct that she had displayed during the meeting but was allowed to continue working for another seven days, then was discharged because the store manager conferred with another store manager and concluded the claimant's past conduct may have been insubordination.

The administrative law judge concludes based upon the evidence in the record that the claimant was not discharged on January 7, 2014 for a current act of misconduct. The claimant was discharged for an act that had taken place one week before and that conduct was not considered to be misconduct by the store manager at the time of the occurrence. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, intentional disqualifying misconduct at the time of the job separation has not been established. Unemployment insurance benefits are therefore allowed.

**DECISION:**

The representative's decision dated February 4, 2014, reference 02, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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