

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAXIMILIAN YOUNG
Claimant

APPEAL NO: 10A-UI-14710-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 02-28-10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 26, 2010, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 16, 2010. The claimant participated in the hearing. Esther Walker, Store Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cook for Casey's from July 8, 2010 to October 4, 2010. On October 1, 2010, the employer asked the claimant if he could come in and work the register from 2:00 p.m. to 4:00 p.m. October 2, 2010, in addition to his scheduled 4:00 p.m.-to-11:00 p.m. shift in the kitchen because it was game day in Ames and they needed the extra help and the claimant agreed to do so. When he arrived for his 2:00 p.m. shift, he noticed that co-worker Anna Link was going in the store to work and he found that odd because Ms. Link works in the kitchen and the kitchen is closed from 2:00 p.m. to 4:00 p.m. The claimant clocked in immediately after Ms. Link and then asked Second Assistant Manager Faith Smith what register he was supposed to be on and she did not know what he was talking about. The claimant told Ms. Smith he was asked to work 2:00 p.m. to 4:00 p.m. and Ms. Link said she was working the register for that shift that day. The claimant returned to the kitchen to call Assistant Manager Jacqueline Burk and tell her that Ms. Link was there as well and Ms. Smith did not know what was going on and Ms. Burk told him he could stay and work if he wanted to make some extra money. He then asked Ms. Smith if she needed help and she said no and told him he could just leave.

The claimant clocked out and went home, returning a few minutes before 4:00 p.m. He clocked in and went to the kitchen to get ready. He was standing at the prep table when he noticed the sausage was low so he went to get a new bag. Ms. Link, who was still supposed to be on the

register and had no supervisory authority over the claimant, told him not to do that. The claimant said, "Don't do what?" and she said, "Don't cross contaminate the meat." The claimant said he had been doing it that way since he started and had never been told not to do it that way, but he did do it the way Ms. Link suggested to avoid any problems. A few minutes later Ms. Burk entered the kitchen area to inquire about the meat situation and the claimant told her he did it the way Ms. Link asked him to. Ms. Burk left the store shortly after that. A short time later, the claimant was making a pizza when his cell phone went off. His ring tone is musical and he forgot to change it to vibrate before going to work. He did not answer the phone, as he was busy with the pizza. Soon after that, the company phone rang and before the claimant could get the store greeting out Ms. Burk said, "Turn off the fucking music." The claimant said she did not have to speak to him like that and she said she received a call from a customer that he was playing music in the store although there had not been any customers in the store at the time his cell phone rang. The claimant asked Ms. Burk if Ms. Link had called her and said he was playing music and she again said it was a customer and told him to get back to work. After that call, the claimant leaned over the swinging door and asked Ms. Link if she called Ms. Burk and said he was playing music and she said, "No, I texted her," sarcastically. The claimant explained it was just his cell phone ringing and she said, "Shut up and get your ass back in the kitchen," in front of a customer. The claimant called Ms. Burk and said Ms. Link verbally disrespected him in front of a customer and he needed to talk to Store Manager Esther Walker or Supervisor Joanne Mahoney. He also said Ms. Burk needed to come in and work for him and Ms. Burk said he better not leave the store.

The claimant clocked out and left the building after the call. He did not leave his visor or name tag at the store when he left. He tried to call Ms. Walker at home approximately six to seven times but could not reach her. He was so upset during the first message that when Ms. Walker did hear the messages, she could not understand what he was saying. He also said in his messages on at least two occasions that he was not quitting. When he realized he could not reach Ms. Walker, he decided to go back to the store to get Ms. Mahoney's phone number. When he returned he saw Ms. Link and Ms. Burk. He went to Ms. Walker's office and left his visor and name tag. He had duplicates of both at home and wanted to leave Ms. Walker a note explaining what happened but did not feel comfortable doing so because he thought Ms. Link and/or Ms. Burk would either tamper with it or take it. He left Ms. Walker's office and went back to the kitchen to get Ms. Mahoney's number, which was partially obstructed by another piece of paper above the sink. The claimant reached up to move the paper blocking Ms. Mahoney's number and Ms. Burk "came running and grabbed" the claimant's arm and shoved it in a downward motion. The claimant was surprised that Ms. Burk touched him. He reached up to get the number again and told Ms. Burk not to ever touch him again and she told him to "get out of my store or I'm calling the cops" and the claimant asked how she was going to call the police when she just assaulted him and Ms. Burk again told him to get out of her store. The claimant said he was going to get Ms. Mahoney's phone number and reached up to move the paper in front of it again and Ms. Burk grabbed his arm, harder than before, and threw it down, causing it to hit the faucet of the sink. The claimant decided the situation was getting out of hand and left the store.

He was experiencing pain in his right forearm, which had contacted the faucet and he was having difficulty driving. He called the Ames Police Department when he arrived home and stated he was assaulted at work. He asked if an officer could take his statement and was told they could and would be out to his house in about an hour or so. The claimant put a frozen bag of peas on his arm but was still experiencing a great deal of pain so he called the police department back and said he was going to the hospital and asked if they could take his statement there. After arriving at the hospital, the claimant was placed in a treatment room and the police arrived approximately 30 minutes later. They asked if the claimant could make a

statement and he said he could not write as he is right handed and could not even make a fist with that arm so one of the officers took his statement and wrote it down. When that was done, the other officer gave the claimant a no-trespass order stating the claimant could no longer go to the store for the next year and the police told him he would need to wait until Monday to speak to the correct people at the corporate office regarding the situation.

The claimant called the corporate office Monday and was told he would need to see their physician regarding his workers' compensation injury. He left a voice mail for Ms. Mahoney and she called back approximately one hour later and told the claimant she was unaware of the situation after he told her what happened. He asked if he still had a job and she said he did but called back a few hours later and said Ms. Walker had already started the termination paperwork and there was nothing more she could do.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was sent home without complaint after being scheduled for the same shift as Ms. Link earlier in the day. He left the second time after

reporting for his 4:00 p.m. shift because both Ms. Burk and Ms. Link were disrespectful and used profanity when speaking to him. After trying to reach Ms. Walker several times, the claimant went back to the store to get the phone number of Ms. Mahoney, a more senior supervisor, and was assaulted by Ms. Burk when she grabbed his arm twice and forced it down when he reached for Ms. Mahoney phone number, the second time throwing his arm into the faucet above the sink, for which he received medical treatment at Mary Greeley Hospital and notified the Ames Police Department. While Ms. Burk apparently did not want him to call her superior about her behavior, she had no right to touch the claimant and cause him injury. Her actions were not only unprofessional and inappropriate, but also illegal and she continued to check with the Ames Police Department to see if she would be charged, which indicates she knew she was in the wrong and could face a criminal complaint. Ms. Burk did file a no trespass order against the claimant that was presented to him at the hospital and that order prevented the claimant from returning to work. Under the above-stated circumstances, the administrative law judge must conclude the claimant was discharged for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The October 26, 2010, reference 04, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw