

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUTH A JOY
Claimant

APPEAL NO: 08A-UI-05704-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/18/08 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's June 11, 2008 decision (reference 01) that concluded Ruth A. Joy (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for non disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2008. The claimant participated in the hearing. Joan Mahoney, an area supervisor, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 20, 2007. The claimant worked as a full-time pizza maker and cashier. Prior to May 2, 2008, the claimant's job was not in jeopardy. The employer did not have any problems with the claimant's work performance.

When the employer hired the claimant in June 2007, the employer informed the claimant about the employer's code of conduct and ethics policy. The policy indicates the employer places a great deal of importance on honesty and integrity. Any violation of the employer's code of conduct and ethics policy, including perceived impropriety, could result in an employee's dismissal.

The claimant had power of attorney over her mother-in-law's assets. After a daughter, who lived out of state, came back and learned the status of her mother's assets, she pressed charges against the claimant (theft by embezzlement). Although the claimant believed she followed her mother-in-law's wishes, she decided to plead guilty to first degree theft charges in the way she handled her mother-in-law's estate.

In early 2008, the claimant informed her store manager that she was going to plead guilty to the charges because of the problems it created for her family. At that time the claimant understood, pleading guilty to the charge would not affect her job because it was not work-related.

The claimant's guilty plea was not in the local newspapers until late April because of on-going negotiations between the attorneys involved in the matter. Mahoney did not learn about the claimant's conviction until May 2 when the claimant presented the employer with a doctor's statement excusing her from work because an unidentified person talked to the claimant at work and made a derogatory comment about her conviction and working for the employer.

On May 5 or 6, Mahoney talked to the employer's legal counsel about the claimant's continued employment. After Mahoney indicated she would not have hired the claimant if she had been convicted of the same offense, Mahoney decided to discharge the claimant for violating the employer's code of conduct and ethics policy. The employer informed the claimant she was discharged on May 7, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The evidence establishes the claimant's store manager knew she was going to plead guilty to first degree theft in early 2008. Even though Mahoney may not have been told about the claimant's decision to plead guilty, the store manager knew and assured the claimant that her continued employment would not be a problem. Since a member of management knew about the claimant's first degree theft conviction in early 2008, the employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. Therefore, as of May 18, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's June 11, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute a current act of work-connected misconduct. As of May 18, 2008, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs