

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARVIS A PAASCH
Claimant

APPEAL NO: 10A-UI-16730-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESTAR FOODS INC
Employer

OC: 10/10/10
Claimant: Appellant (2)

Section 96.5-2 - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 3, 2010 determination (reference 03) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. This determination is identical to the determination issued for reference 01 with the following exceptions - the employer's name is identified as Westar Foods, Inc. instead of Hardee's on reference 03 and the employer's account number has an extension of 017 in reference 01.

The employer is the same employer and all the other factors are the same for both determinations, reference 01 and 03. Therefore, the decision issued for reference 01 (10A-UI-16729-DWT) is identical to this decision issued for reference 03.

The claimant participated in the hearing. Chris Hampton, a district manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in June 2008. She worked as a full time shift leader. Prior to early October 2010, the claimant's job was not in jeopardy.

When the claimant worked the drive through, she gave elderly customers a senior discount after she saw them at the window. The claimant did not realize customers who wanted a senior discount were supposed to ask for the discount.

The claimant worked until September 12 and then went on a medical leave of absence. While the claimant was on a leave of absence, the employer noticed the claimant's store had unusually high food costs. The employer audited the store including cash registers and employees who operated the cash registers. The employer discovered the claimant had an

unusually high number of discounts between 5 and 7 a.m. The employer concluded the discounts were not authorized because the claimant made corrections on the computer after the order had been rung up. The employer reviewed video tape of late August when the claimant worked. The employer did not notice the claimant put any money into her pocket, but did observe her throw away a number of receipts. The employer discovered the above information in early October.

When the claimant returned to work from her leave of absence on October 8, 2010, the employer talked to her about discounts she gave customers. The claimant was upset by the questioning and told the employer she gave discounts to customers who looked poor, when actually she gave them to customers who appeared over 65. The employer discharged the claimant for failing to follow the proper procedure for discounts – customers must ask for a discount unless an employee knows a “regular” customer is a senior citizen. Also, discounts are supposed to be rung up initially; not after the receipt has been rung up, but before the customer pays for the food.

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 § 96.5-2-a. 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).

The employer established business reasons for discharging the claimant. The claimant did not follow the employer’s discount policy for senior citizens. She gave a discount after she saw the customer and concluded the customer was over 65 even when the customer did not ask for a discount. The facts do not establish that the claimant pocketed the difference between the initial charge and the discounted charge. Instead, the facts indicate the claimant only had customers pay the discounted amount. The claimant used poor judgment, but displayed good public relations when she gave discounts to customers who went through the drive who looked over 65. Since the claimant’s job was not in jeopardy prior to learning how the claimant gave discounts in the drive through window, the facts do not establish that the claimant intentionally disregarded the employer’s interests. The claimant did not commit work-connected misconduct. As of October 10, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's December 3, 2010 determination (reference 03) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of October 10, 2010, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs