

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCY D ROSS

Claimant

APPEAL NO: 15A-UI-02749-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 02/01/15

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Marcy D. Ross (claimant) appealed a representative's February 18, 2015 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2015. The claimant participated in the hearing. Tina Rezac 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 23, 2013. She worked full time as a store employee at the employer's Estherville, Iowa location. Her last day of work was February 3, 2015. The employer discharged her on that date. The reason asserted for the discharge was odd behavior.

The employer had given the claimant a written warning on December 17, 2014 for concerns about having odd behavior and being rude. On February 3 the employer felt the claimant was being excessively loud in calling out a greeting across the store to customers coming in the front door; the claimant knew she was expected to greet incoming customers and thought she had only called out loud enough to be heard. The employer also found her behavior to be somewhat odd, for example, that the claimant was laughing to herself while ringing up customers at the register. The claimant indicated that she was laughing because of things that another employee

had said to her earlier. However, because the employer was concerned that the claimant's behavior was making customers uncomfortable, it determined to discharge the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is her calling out the loud greetings and laughing to herself while ringing up customers on February 3. While this behavior might be somewhat quirky, the employer has not established that the conduct was substantial misbehavior. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). While the employer may have had a good business reason for discharging the claimant, it has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 18, 2015 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs