

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELLEY M STEIG
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 17A-UI-11253-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/08/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 24, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 21, 2017. Claimant participated. Employer participated through area supervisor Jennifer Meyer and store manager Marci Markley. Employer Exhibit 1 was admitted into evidence with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a store employee from August 5, 2014, and was separated from employment on September 29, 2017, when she was discharged.

The employer has a written employee conduct policy that prohibits employees from using profanity. Employer Exhibit 1. The employer also has a written anti-harassment policy that prohibits employees from making offensive comments or jokes. Employer Exhibit 1. Employees may be discharged for violating these policies. Employer Exhibit 1. Claimant was aware the employer's policies. Employer Exhibit 1.

On September 29, 2017, while claimant was working her scheduled shift, Ms. Meyer was sitting in the office, claimant was by the sub sandwich station, and another employee (Brittney) was by the pizza table. Ms. Meyer said to claimant and Brittney that she wished she could win \$500.00. Brittney responded that she had won \$30,000.00. Brittney also stated that she had spent it all. Claimant stated, "You know what they call that don't you? N**ger Rich." Employer Exhibit 1. Ms. Meyer did not respond to claimant's comment. Ms. Meyer left the office and went to the show room floor and told Ms. Markley what claimant had stated. Ms. Meyer and Ms. Markley brought claimant into the office. Ms. Meyer told claimant that she was going to have to call human resources because of the comment that claimant just made. Claimant asked what comment. Ms. Meyer explained what comment. Claimant apologized and responded it just

slipped out. Ms. Meyer then contacted human resources and the decision was made to discharge claimant. Ms. Meyer then met with claimant and told her she was discharged. Employer Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit that was admitted into evidence. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's rules prohibiting employees from using profanity and offensive comments is reasonable.

Claimant's argument that her conversation was a private conversation is not persuasive. On September 29, 2017, Ms. Meyer heard claimant say, "N**ger Rich". Employer Exhibit 1. Claimant's comment is clearly offensive and a violation of the employer's policies. Employer Exhibit 1. "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990). The employer presented substantial and credible evidence that claimant's conduct was a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees[.]" Iowa Admin. Code r. 871-24.32(1)a. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The October 24, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs