

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY N ROBISON

Claimant

APPEAL NO. 12A-UI-06850-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/20/12

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 7, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on July 5, 2012. Claimant participated. Employer participated through manager Connie Daggett. Employer's Exhibit One was admitted to the record.

ISSUE:

Did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a pizza maker and was separated from employment on May 18, 2012. Manager Connie Daggett discharged her because she was intimidating other employees. Kitchen person Kayla Mcspadden left Daggett a note reporting that on May 11 claimant yelled at her to remake a pizza for a customer who was waiting. This was done in front of three or four other customers waiting for pizzas. Claimant later apologized to Kayla.

She was warned in writing on May 3, 2012 for inappropriate joking with a customer. On March 28, 2012 the employer wrote her up for shouting with the donut maker Greg Seacry who became upset when claimant told him he was supposed to work the extra scheduled hour to help unload the truck. On April 17, 2012 claimant received a written warning for being rude to donut maker Anastasia Kesslering when she was cleaning the kitchen and getting ready to leave when a customer wanted more biscuits and gravy. Claimant became hostile and rude to her about performing her job duties. Kesslering yelled back at her. Daggett had verbal discussions with each of them but gave no warnings. The customer left without the additional food.

REASONING AND CONCLUSIONS OF LAW:

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

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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence from multiple sources that claimant repeatedly was aggressive and rude in her interactions with coworkers after having been warned.

DECISION:

The June 7, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs