

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J COREY
Claimant

APPEAL NO. 10A-UI-05915-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/14/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 9, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 8, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Jean Yamagata participated in the hearing on behalf of the employer. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a cashier from November 2008 to July 17, 2009. Her supervisor was Jean Yamagata. She received a written warning for being late for work on April 29, 2009. She received a suspension on June 12, 2009, for visiting too much with customers and coworkers and not be productive enough.

On July 16, 2009, Yamagata asked the claimant unexpectedly to work for three hours until close. The claimant agreed. She was outside the store from 10:34 to 11:02 p.m. taking care of the outside cleanup. She also smoked a cigarette and shooed away some raccoons, which were near the garbage. She started sweeping at 11:20 p.m. When she did the mopping, she mopped around the rugs to save time because she hadn't been able to mop the areas at the time the rugs were outside being shook. Unpurchased donuts are boxed at end of the day to be sold as day-old donuts the next day for half off. Since the claimant was not working the next morning, she purchased a box of day-old donuts before she left. She did not realize this was prohibited.

The claimant was a few minutes late on July 18. She ended up working a double shift because the person who was to work the second shift got ill and she agreed to work the rest of his shift. As a result of working extra hours, the claimant was exhausted and woke up later than she had expected on July 19. She called the assistant manager and asked if she could be 30-60 minutes late as she did not have a chance to get cleaned up for work. Her request was

denied. The claimant reported to work before the start of her shift, but went to the bathroom to wash her face and brush her teeth and hair so she would be presentable. She started actually working several minutes after her shift start.

Yamagata ended up reviewing the surveillance video of the claimant's shift on July 16. She noted that the claimant left the store from 10:34 to 11:02 p.m., started sweeping at 11:20 p.m., mopped around the rugs, and purchased donuts after the store closed. As a result of this conduct, her late arrival on July 18, and her late start to work on July 19, Yamagata discharged the claimant on July 20.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. At most, unsatisfactory work performance has been proven, which does not meet the definition of disqualifying misconduct.

DECISION:

The unemployment insurance decision dated April 9, 2010, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css