

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA A NUNN

Claimant

APPEAL NO: 09A-UI-09545-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 05/17/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated June 22, 2009, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 21, 2009. The claimant participated personally. The employer participated by Sandy Hawkins, Area Supervisor.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered the evidence in the record, finds: The claimant was employed as a part-time donut maker for this employer from September 4, 2007 until May 19, 2009 when she was discharged.

The claimant was discharged based upon reports that the company's area supervisor received that Ms. Nunn had been insubordinate or "bad mouthed" her manager during a store meeting. It was also alleged that Ms. Nunn had brought additional individuals to the store together, that the claimant had been late for the meeting and parked in the wrong spot.

The claimant had called to inquire the start time of the meeting and would be delayed because she was providing care to her mother that was ill. Ms. Nunn parked in a regular parking position and did not bring any other individuals to the meeting. At the beginning of the meeting the claimant commented on donuts that had been prepared by the manager as Ms. Nunn had been instructed not to prepare that of dough. The claimant did not intend her remarks to be insubordinate.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record is sufficient to establish conduct sufficient to disqualify the claimant from the receipt of unemployment benefits. It is not.

In this case the employer relies on hearsay evidence to establish that the claimant was discharged for misconduct. While hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable.

The claimant denied in her sworn testimony intentionally parking in the wrong spot, bringing other individuals to the meeting or intentionally reporting late. She also denied being insubordinate and reasonably explained her comment and the fact that her intention was not to be insubordinate to her supervisor. As the record does not establish sufficient warnings prior to discharge for similar conduct, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying conduct.

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.

DECISION:

The representative's decision dated June 22, 2009, reference 01, is affirmed. The claimant was dismissed for no disqualifying reason. Benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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