

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DIANNA L HAURUM

Claimant

APPEAL NO: 19A-UI-00996-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 01/13/19

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 30, 2019, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 19, 2019. The claimant participated in the hearing. Nancy Freese, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time store employee for Casey's from March 18, 2014 to January 12, 2019. She transferred to her last store July 12, 2016. She was discharged for insubordination.

On January 11, 2019, the claimant called the store manager at home around 4:00 p.m. because the gas pumps were not working. Once at the store the claimant said to the employer, "Nancy, the reason Marlys (assistant manager) couldn't come in was because she was in Waterloo." The employer did not know why the claimant said that as she was the store manager and did not like the way in which the claimant made the comment. She left the store to get gas and when she returned she asked the claimant why she made the excuse. She said she was the store manager and it was unnecessary for the claimant to make the excuse. The employer turned to go to the office and as she got to the door the claimant said from the register in front of co-workers and customers, "You see that's why we don't call you because of that reaction right there." The employer turned around and said, "Dianna!" and went into the office. The claimant went to the office door and wanted to discuss the chain of command and stated the employees were always told not to call the store manager. The employer told her to come into the office so they could discuss the matter privately. They closed the office door and the employer asked the claimant who she thought ran the store. When the claimant started to answer the employer felt she was imitating her and was mocking her. Consequently, the employer stated she could not speak with her any longer and told her to leave the office. The employer went home and thought about the exchange she had with the claimant and decided to issue the claimant a corrective action for insubordination.

On January 12, 2019, the employer went to the store and wrote the corrective action. She asked the claimant to come to the office and told her they needed to talk about the situation that occurred the day before. The claimant saw the warning on the computer and strongly disagreed. Her tone was "harsh," she was "sarcastic" and argued about the warning because she did not feel the employer could accurately portray the events of the previous day in a few sentences. The employer tried to get the claimant to discuss what happened the day before but the claimant was openly hostile. The claimant refused to sign the warning. The employer stated, "C'mon now. You need your job," and the claimant said, "If I didn't need this job I would have walked out on you last night." The employer terminated the claimant's employment for insubordination.

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, 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from

receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980).

While the employer may have been overly sensitive to the claimant's initial remark as to why Marlys was not called to come in and deal with the problem with the gas pumps, the claimant was insubordinate in response. It was inappropriate and unprofessional for the claimant to loudly proclaim that was why employees do not contact the store manager in front of co-workers and customers. Rather than letting the matter drop given that both parties were upset, the claimant pursued the issue by going to the office and pushing the chain of command procedure. Although she certainly had the right to inquire about the chain of command, her timing in this case was poor and it was highly inappropriate and insubordinate for her to mimic the employer and speak to her in a sarcastic tone. The employer considered the issue overnight and made the decision to give the claimant a corrective action the following day. When she did so the claimant responded in an unreasonable manner. She was hostile, argumentative and sarcastic again. While the claimant had the right to disagree with the warning, the proper way in which to do so is to make her comments in the space provided for employee remarks on the warning. Even if an employee disagrees with a warning, she is still obligated to sign indicating she received the warning and that the issues were discussed with her. The claimant's refusal to sign the warning constitutes insubordination and is misconduct under Iowa law.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The January 30, 2019, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn