

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA J LANSER
Claimant

APPEAL NO. 17A-UI-06880-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 06/11/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's June 29, 2017, decision (reference 02) that concluded Carla Lanser (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 25, 2017. The claimant was represented by Nicholas Shaull, Attorney at Law, and participated personally. The employer participated by Kevin Kloser, Area Supervisor; Kathy Faust, Store Manager; and Alisha Weber, Unemployment Insurance Consultant. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 16, 2007, as a part-time store employee. The claimant signed for receipt of the employer's handbook on November 16, 2007. The employer did not issue the claimant any warnings during her employment. She often talked with her store manager to vent about customers or co-workers. Sometimes she used inappropriate language. She might say she wanted to "beat the shit out of them" but the store manager never issued her a warning or threatened to terminate her. The conversations were just between the two of them.

On May 4, 2017, the claimant called the store manager to complain about a co-worker not performing her work and using profanity on the job. She said, "If I have to take my smock off and beat the shit out of her, I will". The store manager said she would come to the store. The store manager had issues of veracity with the co-worker. The store manager talked to the co-worker and the claimant. Later, the claimant was outside when the co-worker drove up and yelled profanity at the claimant. The claimant said "If you have a problem with me we can settle right now. I will take my smock off". The co-worker drove away. The claimant meant she would settle the matter by calling the store manager. The co-worker complained to the employer

about the claimant on May 10, 2017. On June 6, 2017, the employer terminated the claimant for threatening a co-worker with bodily harm.

The claimant filed for unemployment insurance benefits with an effective date of June 11, 2017. The employer participated personally at the fact finding interview on June 28, 2017, by Alisha Weber.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Casper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer allegedly occurred on May 4, 2017. The claimant was not discharged until June 6, 2017. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's June 29, 2017, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs