

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J BRANDT
Claimant

APPEAL NO: 14A-UI-09396-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/10/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 4, 2014 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the September 30 hearing with his attorney, Shaun Thompson. Darcy Roeder, the former store manager, testified on the claimant's behalf. Bill Sizer represented the employer. Teresa Garrett, the area supervisor, and Kevin Sinwell, a district manager, were subpoenaed by the claimant to testify at the hearing. Kathy Huitt, an assistant manager, testified on the employer's behalf. During the hearing, Employer Exhibits One through Eight and Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2013. He worked as a full time cook. When the claimant started this employment, he received information about the employee handbook. (Employer Exhibit Two.) One of the employer's policies, Anti-Harassment and Discrimination Policy informs employees the employer does not allow harassment at work. Harassment may include verbal abuse or degrading words used to describe an individual. (Employer Exhibit Three.)

The employer's workplace violence prevention policy states the employer is committed to providing a work environment free of violence or threats of violence, either explicit or implied is not tolerated. The policy also states that employees must report any threats, acts or concerns of workplace violence to a member of management and law enforcement. (Employer Exhibit One.)

Shortly after the claimant began working, Roeder gave him a verbal warning on September 27, 2013, for using unprofessional behavior and language to management personnel when he became frustrated during a training. (Employer Exhibit Eight.)

In late May 2014, Roeder, Huitt and the claimant were talking. Roeder asked the claimant how J.L. related to employees when Roeder was not at work. He reported that she upset some employees by following them out to the garbage dumpster. The claimant stated that he did not believe J.L.'s conduct was appropriate and someone should break her legs to teach her a lesson. The claimant said this as a joke and all three laughed. Roeder did not take this comment as a threat and did not report the comment to anyone. Huitt did not report this comment to anyone. J.L. was never injured.

On June 3, the claimant received a corrective action form for being absent from work without notification. When Roeder was out of town, J.L. discharged the claimant on June 9 for failing to report to work or notifying the employer on June 5 and 6 that he was unable to work. J.L. informed the claimant he was discharged on June 9. (Claimant Exhibit B.) The claimant complained or appealed this discharge to the corporate office. The claimant informed Bridget Steele that he had notified the employer he was unable to work and the reasons for his discharge were false. The employer investigated this complaint under its Employee Formal Conflict Resolution procedure. (Employer Exhibit Seven.)

After the claimant was told he was discharged on June 9, he did not work. On June 10, Huitt told the employer about the claimant's comment concerning J.L. in late May. Garrett talked to Huitt and Roeder about the claimant's comment. Huitt reported the claimant had been upset with J.L. for following him out to the dumpster and reported that the claimant said, "That f --- thwat followed me to the dumpster and I about broke her legs." Garrett reported this comment to management. Garrett did not talk to the claimant about this comment. No one talked to the claimant about his late May comment.

Garrett generated a June 23 corrective action statement that informed the claimant he was discharged for threatening to cause bodily harm to a manager. The form also stated that derogatory comments and profanity at the workplace was not acceptable. The employer mailed this corrective action (Employer Exhibit Six) in addition to a July 1 letter from Kevin Sinnwell. The July 1 letter informed the claimant that the employer discovered the claimant had called or sent a text message to inform management he would be absent on June 5 and 6. Even though the June 9 termination was not correct, the employer was still discharging the claimant for threatening to physically harm a member of management. The employer then discharged the claimant as of June 23, 2014. (Claimant Exhibit A.)

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The evidence indicates the employer initially discharged the claimant on June 9 for failing to notify the employer he was unable to work as scheduled. The claimant did not work after June 9, but he appealed his termination to the corporate office. The employer agreed the claimant had notified the employer he was unable to work and should not have been discharged on June 9. Even though the employer agreed the June 9 termination was not appropriate, the employer then discharged the claimant for a comment he made in late May.

The claimant's late May comment when he was frustrated with J.L. may have been inappropriate, but he did not threaten J.L. At the time he made the comment, neither Huitt nor Roeder considered his comment a threat. This conclusion is supported by the fact neither Roeder nor Huitt reported the comment or contacted any law enforcement official. Only after the claimant had been discharged on June 9, did Huitt report his late May comment.

The claimant used poor judgment in late May when he expressed his frustration about J.L. to Roeder and Huitt. It is understandable that the employer did not want the claimant to return to work even though his June 9 termination was not based on correct information. The employer had business reasons for ending the claimant's employment, but the claimant did not commit work-connected misconduct. As of August 10, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's September 4, 2014 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of August 10, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs