

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COURTNEY L SPIER

Claimant

APPEAL 20A-UI-00677-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/22/19

Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On January 23, 2020, Casey's Marketing Company (employer) filed an appeal from the January 13, 2020 (reference 01) unemployment insurance decision that determined Courtney Spier (claimant) was eligible to receive unemployment insurance benefits.

A telephone hearing was held on February 7, 2020. The parties were properly notified of the hearing. Employer participated by Store Manager Tanyelle Wooten. Claimant participated personally.

Official notice was taken of claimant's payment history on the unemployment insurance system. Employer's Exhibits 1-4 were admitted.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time cashier. Claimant's first day of employment was October 19, 2018. The last day claimant worked on the job was December 23, 2019. Claimant's immediate supervisor was Wooten. Claimant separated from employment on December 27, 2019. Claimant was discharged by Wooten on that date.

The final incident leading to claimant's discharge was a customer complaint about claimant shutting down the coffee machine too early. The customer came into the store around 7:00 or 8:00 p.m. on December 7, 2019. Claimant had shut down the coffee machine already, even though it was meant to be on until closing time at 11:00 p.m. Claimant was aware of the requirement of keeping the coffee machine running until 11:00 p.m. Employer received the complaint on December 9, 2019. Wooten did not become aware of the complaint until December 23. Wooten then reviewed video from December 7 and determined claimant had shut down the coffee machine early. Wooten then discharged claimant. See Exhibit 4.

Claimant was previously disciplined for poor performance on November 18, 2019, for not properly cleaning before closing the store; on November 4, 2019, again for failing to complete all tasks before closing the store; and on October 7, 2019, for closing the store approximately 90 minutes early without permission to do so. See Exhibits 1-3.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the January 13, 2020 (reference 01) unemployment insurance decision that determined claimant was eligible for benefits is **AFFIRMED**.

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 provides in relevant part:

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.

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Employer became aware of the final incident on December 9, 2019, but did not begin investigating until approximately two weeks later, on December 23, 2019. It then did not discharge claimant for several more days after that, on December 27, 2019. The employer cannot on one hand argue that the conduct was so egregious that it warranted discharge instead of a lesser penalty, but then allow the claimant to continue working for more than two weeks before discharging her.

Because the act for which the claimant was discharged was not current and the claimant may not be disqualified for past acts of misconduct, benefits are allowed. Because the administrative law judge finds claimant is eligible for benefits, the other issues listed on the notice of hearing need not be addressed.

DECISION:

The January 13, 2020 (reference 01) unemployment insurance decision is AFFIRMED. Claimant is eligible for benefits, so long as she meets all other eligibility requirements.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/rvs