

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA L HOWELL

Claimant

APPEAL NO. 13A-UI-05979-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 07/15/12

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lisa Howell (claimant) appealed a representative's May 7, 2013 decision (reference 04) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 5, 2013. The claimant participated personally. The employer participated by Rayce Taylor, Manager, and Karen Colvin, Area Supervisor. The claimant offered and Exhibit A 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 September 16, 2012, and at the end of her employment she was working as a part-time cashier. On April 9, 2013, the claimant entered the manager's office to complain about her son's schedule. The manager at first told the claimant she would not discuss the matter with the claimant but the claimant persisted. The manager explained the reason the son was scheduled for second shift. The claimant began to complain about her wages and the employer's denial of her request to become a full-time employee. The manager told the claimant that if she did not like her situation, she could find another job. The claimant became upset and the manager was afraid of the claimant. The manager asked the claimant to leave her office four times, becoming stern by the last request.

The claimant left the office and went out into the store which was filled with customers. The claimant continued to speak loudly about her issues in front of the customers. The manager asked the claimant to go home for the day. The claimant heard the manager ask her to leave but did not hear her say go home for the day. After requesting three or four times for the claimant to step outside or the manager would have to call for law enforcement, the claimant stepped outside.

At that time the area supervisor arrived. The claimant told the area supervisor that she was done with being disrespected and turned in the employer's items. She asked the area supervisor why the employer did not give the claimant full time and asked for the employer's corporate number. While the area supervisor was writing the corporate number, the claimant was standing in the open door of the employer's store saying she knew it was her "god damn choice to call corporate." The claimant never returned to work after April 9, 2013. The employer assumed the claimant quit work. The claimant assumed she was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). In order for the claimant to voluntarily quit work she has to intend to quit. Her words and actions April 9, 2013, might lead some to believe she quit but this administrative law judge finds the claimant did not intend to quit work.

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. On April 9, 2013, the claimant was asked repeatedly to leave the manager's office before she followed the manager's instructions. Then she was asked repeatedly to leave the store for the day. The claimant did not follow those instructions until she was told that the employer would call law enforcement. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's May 7, 2013 decision (reference 04) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css