

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COURTNEY L SPEER**

Claimant

**APPEAL NO. 11A-UI-10086-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC:06/12/11**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated July 20, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 8, 2011, in Davenport, Iowa. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the testimony of Courtney Speer.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as an assistant manager at the employer's store in Eldridge, Iowa. Her last day of work was June 2, 2011. The claimant was terminated on June 2, 2011. The claimant did not know she was terminated until June 4, 2011, when she attempted to clock in for her shift.

The claimant had been promised a raise of \$.50 per hour in February 2011. The raise was supposed to take effect in March 2011. Nothing had happened. The claimant left a note for her manager, Samantha Guiliani, saying that she wanted to discuss the raise and the weekend schedule with her. A meeting was held in Ms. Guiliani's office on June 2, 2011. The claimant expressed her frustration over the raise and being scheduled every weekend. The claimant asked to go home for the rest of the day. When she tried to clock in on June 4, 2011, she could not access the system. When she asked why she could not clock in, she was told she had been terminated.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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.

871 IAC 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.

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 duty to the employer. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The claimant was terminated after she asked her manager about a promised raise and her weekend schedule. The claimant did not even know that she had been terminated. She only found out when she tried to clock in for her next shift. The employer did not participate in the hearing and offered no evidence on why the claimant was terminated for asking about matters clearly related to her employment. The employer has failed to show misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated July 20, 2011, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs