

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATIE R ADAMSON
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 21A-UI-18891-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/20/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 18, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 18, 2021. Claimant Katie R. Adamson participated and testified. Employer Casey's Marketing Company participated through district supervisor Ron Niermeyer.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a store manager from August 15, 2007, until June 23, 2021, when she was discharged.

Employer maintains an employee conduct policy which prohibits the use of profanity or disparaging the employer. Claimant received a copy of the policy in the employee handbook upon hire and signed an acknowledgment of the policy.

On June 22, 2021, employer notified claimant that because her store was underperforming, she would no longer be the store manager. It offered claimant a choice between two positions: a kitchen manager or assistant manager position. Claimant's pay would have decreased, and her hours would be different. Claimant asked for time to think about the decision because the hours were not compatible with her childcare. After work that day claimant posted on her personal Facebook account that she was looking for a new job. When someone asked about Casey's, claimant replied, "F*#! Casey's." Claimant's Facebook page listed Casey's as her employer. A Facebook friend referred to the post to management, and on June 23, 2021, claimant's employment was terminated for violating its employee conduct policy.

Claimant had never been previously disciplined for violating the same policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

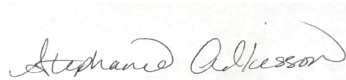
The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, claimant was terminated after making a disparaging post using profanity regarding employer on social media. It is understandable that claimant was frustrated about the demotion, but the way she handled her frustration was unacceptable and violated employer's employee conduct policy. Claimant's actions were in deliberate disregard of employer's interests and amount to misconduct, even without prior warning. Benefits are denied.

DECISION:

The August 18, 2021, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Stephanie Adkisson
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October 29, 2021
Decision Dated and Mailed

sa/kmj