

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI L PETARY
Claimant

APPEAL NO. 13A-UI-02412-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 1/13/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a fact-finding decision dated February 22, 2013, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 25, 2013. Claimant participated personally. Employer participated by Pam Marts, Manager of Store Seven; Millie Vroegh, Store Supervisor, was also present. Exhibits A and B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant worked at Casey's beginning in August 2010. She was a full-time pizza maker. Claimant had been off work the week prior to this on medical leave. Claimant worked the full day on January 16, 2013. She felt that Pam Marts and another employee were harassing her. Specifically, she heard Ms. Marts and another employee, Liz, talking about her in a derogatory or threatening manner. At the end of the day, approximately 3:55 p.m., claimant was leaving for the day. Ms. Marts said, "I knew you were going to quit." The claimant denied that she quit and left. She called Area Supervisor, Millie Vroegh in an effort to resolve the situation. She separated from employment on January 16, 2013.

REASONING AND CONCLUSIONS OF LAW:

The initial question raised in this case is the nature of the separation. Separations are categorized into four separate categories under Iowa law.

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

- a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
- b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.
- c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
- d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

See Iowa Administrative Code 871—24.1.

The nature of a separation is generally determined by ascertaining which party initiated the separation. If the employer initiated the separation, with intent to permanently sever the employment relationship, then the separation is generally considered a termination or layoff. If the claimant initiated the separation, with intent to permanently sever the employment relationship, then the separation is generally considered a quit. It is the employer's burden to prove the nature of the separation by a preponderance of evidence.

This is a very close case with significantly disputed evidence. It is obvious that one or more of the witnesses is not being honest or forthright in their testimony. Ms. Marts alleged that claimant quit at the end of the day. Ms. Vroegh alleged that when she spoke with claimant on the phone later that day and that claimant reaffirmed that she quit. The claimant denies that she quit to either party.

It is the finding of the undersigned that the employer has failed to carry its burden of proof that the claimant quit. The evidence is ultimately equivocal. The employer presented no documentation that the claimant quit. There is no note. There are not even any employer forms documenting that claimant quit. Ordinarily an employer would possess some type of documentation of an employee's voluntary separation from employment. The claimant did have a motive to quit in that she felt she was being harassed. Nevertheless, the employer conceded that the claimant later asked to be transferred but refused to consider this request. When viewing all of the evidence submitted, the employer did not carry its burden to prove, more likely than not, that she quit.

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.

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.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. In reality, the employer did not even allege any misconduct. The employer merely alleged the claimant quit. Failing to prove that by a preponderance of evidence, the claimant is entitled to benefits.

DECISION:

The fact-finding decision dated February 22, 2013, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/tll