

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANNA J BAKER**

Claimant

**APPEAL NO. 11A-UI-02950-PT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 01/16/11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated March 3, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 1, 2011. Employer participated by Tina Jennings, manager. Claimant participated with Wendy Donahue as a witness. Employer Exhibits 1 -3 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct or whether claimant voluntarily quit her employment.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was employed from October 1, 2008 through January 14, 2011. She was a part-time donut maker. The claimant and the manager got into argument over the claimant's schedule for the next weekend. At some point the manager asked for claimant's keys. Claimant gave the employer her keys and left.

**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.

The employer contends that the claimant walked off the job. The testimony of the claimant and the manager are not consistent on whether the claimant indicated she was leaving or whether she was asked to hand over her keys. The employer has the burden of proof and has failed to prove that the claimant quit her employment. The separation must be considered as a discharge. The claimant was concerned about the inconsistency in her schedule so spoke to her manager. It is not established from this record that the claimant did so in a manner that was insubordinate. The claimant was discharged but the employer has not established disqualifying misconduct.

**DECISION:**

The decision of the representative dated March 3, 2011, reference 01, is affirmed. Benefits are allowed, provided claimant is otherwise eligible.

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Ron Pohlman  
Administrative Law Judge

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Decision Dated and Mailed

rrp/pjs