

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARA M MILLER**

Claimant

**APPEAL NO. 17A-UI-00011-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/27/16**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sara Miller (claimant) appealed a representative's December 23, 2016, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment 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 January 24, 2017. The claimant participated personally. The employer participated by Riea Searcy, Manager, Chrystal White, Second Assist Manager. The employer offered and Exhibit 1 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 April 1, 2016, as a part-time employee. The claimant signed for receipt of the employer's handbook, conditions of employment, and anti-harassment policy. In the work environment, employees and supervisors swore from time to time but were not terminated.

In approximately September 2016, the claimant was hired as a full-time donut maker. The claimant told the employer she wanted more hours and would not take the job unless it was full-time. She completed documentation for becoming a full-time employee. The employer did not train the claimant to make sub sandwiches. On September 19, 2016, the employer issued the claimant a written warning for failure to make sub sandwiches on September 13, and 15, 2016, after a customer requested them. The employer notified the claimant that further infractions could result in termination from employment.

On November 7, 2016, the claimant was in the hospital. She did not report her absence until after the start of her shift. The claimant provided the employer with a bracelet she wore in the hospital as proof of her reason for absence. The employer issued the claimant a written warning on November 8, 2016, for her failure to properly report her absence. The claimant was

not suspended because she provided proof of her absence. The warning stated, “[W]hy she was absent witch (sic) will remain confidential (sic) as she requested.” The employer notified the claimant that further infractions could result in termination from employment. Later, the employer thought the bracelet had been altered but could not see how it was possible. The employer showed the hospital bracelet to subordinates.

The claimant worked eighty hours every two-week pay period for months. On November 24, 2016, the claimant looked at the work schedule the employer posted. The claimant was scheduled to work sixty-four hours in the coming two-week period. The claimant said, “I should have taken the other fucking job”. Employees and a customer heard the claimant. The claimant continued to work for the employer. On December 1, 2016, the employer terminated the claimant for swearing on the job in front of a customer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

Iowa Admin. Code r. 871-24.32(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 Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant's utterance was an isolated incident and a good faith error in judgment. It did not rise to the level of misconduct. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's December 23, 2016, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs