

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANIE E HOLMES
Claimant

APPEAL NO: 13A-UI-09810-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS PIZZA RANCH INC
Employer

OC: 07/28/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 26, 2013 determination (reference 01) that disqualified her from receiving benefits and held the employer's account exempt from charge because she had been discharged for disqualifying reasons. The claimant participated in the hearing. Jonathan Troyer, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 29, 2013. She worked part time and performed a variety of jobs. One of the claimant's jobs included delivering pizzas to customers.

In late July 2013, a customer reported that his credit card indicated he had given the claimant a \$3.00 tip when he had not given her a tip. The customer contacted the employer a day or two after the delivery because his bank statement reflected the \$3.00 tip and his customer receipt did not reflect a tip.

When the employer talked to the claimant about this allegation, she denied adding a tip to the customer's credit card. When a pizza is delivered, two copies of a credit card charge are taken by the driver. The customer signs one copy and keeps one copy for himself. The delivery driver turns in the signed copy. The credit card charges are separate, not a carbon copy.

The employer considers adding a tip to a credit card without the customer's authorization as theft and is grounds for an employee's immediate termination. Even though the claimant's job was not in jeopardy before this incident and the employer planned to give her a raise, the employer discharged the claimant on July 26, 2013. Based on the customer's insistence that he had not added a tip, the employer concluded the claimant had added a tip without the customer's approval and discharged her for this incident.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Based on a customer's insistence that the claimant added a tip without his authorization, the employer established justifiable business reasons for discharging the claimant. Unfortunately, the employer relied on hearsay information from a customer who did not testify at the hearing. The claimant's testimony is credible and must be given more weight than the employer's reliance on unsupported hearsay information. The fact the claimant's job was not in jeopardy prior to this incident supports her testimony.

If the evidence had established that the claimant added a tip without a customer's authorization, the claimant would have committed work-connected misconduct. In this case, the facts presented at the hearing do not establish that the claimant added a tip. As a result, she did not commit work-connected misconduct. As of July 28, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's August 26, 2013 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of July 28, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css