

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACKIE C STONEHOCKER
Claimant

APPEAL NO: 08A-UI-02774-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 06/03/07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jackie C. Stonehocker (claimant) appealed a representative's March 10, 2008 decision (reference 02) that concluded he was not qualified to receive benefits and the account of Casey's Marketing Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 4, 2008. The claimant participated in the hearing. Diana Sloss, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on June 30, 2007. The claimant worked as a cook on the evening shift. The assistant manager worked with the claimant and supervised him.

When the employer hired the claimant, the employer explained that all food employees ate at work had to be paid for. The claimant did not understand employees were required to sign a register slip verifying they had paid for food at a discounted price. Although the employer wanted food paid for before an employee left a shift, there was one time the claimant paid for food the day after he ate it.

The employer suspected the claimant ate some cheeseburgers during his employment. The employer did not know the claimant threw the cheeseburgers away. During his shift on February 4, the assistant manager reported that the claimant ate a tenderloin that he did not pay for. This was reported to Sloss's supervisor, who then discharged the claimant. The claimant, however, did not eat the tenderloin as the assistant manager reported.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

If the claimant ate a tenderloin at work and did not pay for it, he would have committed a current act of work-connected misconduct. The assistant manager did not testify at the hearing, so the claimant's testimony must be given more weight than the employer's reliance on hearsay information from an employee who did not testify at the hearing. As a result, the facts do not support that the claimant ate food at work without paying for it. Therefore, he did not commit work-connected misconduct. As of February 17, 2008, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's March 10, 2008 decision (reference 02) is reversed. The employer discharged the claimant for business reasons. The evidence presented during the hearing does not establish that the claimant committed work-connected misconduct. As of February 17,

2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs