

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MICHAEL L BEALS

Claimant

APPEAL NO: 18A-UI-09789-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/10/17

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 13, 2018, reference 04, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 9, 2018. The claimant participated in the hearing. Dennis Wagner, Manager and Zontel McCann, Unemployment Insurance Consultant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time car wash attendant for Casey's from May 1, 2018 to July 9, 2018. He was discharged for accumulating three written warnings.

On June 14, 2018, the claimant received a written warning for failing to complete all duties on the check list at the end of his shift. On July 5, the claimant received a written warning for sleeping on the job June 18, 2018. He is diabetic and his physician put him on a new medication that made him very tired. He told the employer he was experiencing a sleeping issue and having trouble staying awake at work as a result prior to June 18, 2018, but did not provide a doctor's note to that effect. On July 9, 2018, the claimant received his third written warning after the employer said he sat on a curb outside the car wash for four hours July 5, 2018. The employer stated he was told that by a new car wash employee and two car wash technicians that were there that day. The claimant denies sitting on the curb for four hours. He agrees he went out and sat on the curb and smoked cigarettes when there were no customers after the employer issued him his second written warning on that date. The employer stated he has cameras in the car wash and the claimant agreed but stated the cameras do not cover the door to the backroom he was using. The employer terminated the claimant's employment July 9, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proving disqualifying misconduct. *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 substantial and 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).

While the claimant should have performed all of the duties on the checklist June 14, 2018, and should have brought a note from his doctor explaining that his new medication made him very drowsy which likely caused him to fall asleep June 18, 2018, the claimant denies sitting on the curb outside the car wash for four hours July 5, 2018, and the employer did not witness it

personally or provide a first-hand witness who observed it either. Although the administrative law judge notes the claimant could be a more conscientious employee, under these circumstances, the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The September 13, 2018, reference 04, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn