

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

CODY A SHAY
Claimant

APPEAL NO. 18A-UI-03065-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/04/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Cody Shay (claimant) appealed a representative's February 26, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his 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 April 2, 2018. The claimant participated personally and through former co-workers Lacey Vrchoticky, Joel Hoxton, and Felishia Griffin. The employer participated by Blaine Miller, Area Supervisor, and Brandon Krutzfield, Store 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 September 11, 2009, as a full-time second assist manager. On September 11, 2009, he signed that the employer's handbook was available. The handbook states, "Relatives or employees having personal relationships may not be employed in a direct supervisor/subordinate situation or under any other circumstances which the Company deems inappropriate. Supervisors violating the non-fraternization policy or who fail to immediately report involvement in a personal relationship with a subordinate employee will receive corrective action, up to and including termination of employment".

A new manager came to the claimant's store. In approximately late September 2017, he asked the claimant if he was having a relationship with a subordinate cashier. The claimant reported that he was. The claimant remembers the store manager saying that it was okay but he did not want to see any favoritism. The store manager joked with the couple at least twice a week about their relationship. Other employees heard the store manager make these comments.

On January 29, 2018, the store manager told the area supervisor about the relationship. The store manager said he heard about it in late December 2017, but was too inexperienced to

know it was a terminable offense. The area supervisor terminated the claimant on February 1, 2018, for fraternization in the workplace.

REASONING AND CONCLUSIONS OF LAW:

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

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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). The employer must establish not

only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer learned of the last incident late September 2017. The employer knew of the claimant's conduct, changed its mind about the rules, and approved. Later, the employer rescinded its approval and the claimant was discharged on February 1, 2018. The employer did not give the claimant notice that it had changed its mind about the rules before the discharge. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's February 26, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs