

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DILLON W MEALMAN
Claimant

APPEAL NO. 10A-UI-02176-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 01/17/10
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed from a department representative's decision dated February 5, 2010 reference 01, that held the claimant was not discharged for misconduct on January 15, 2010, and benefits are allowed. A telephone hearing was held on March 30, 2010. The claimant did not participate. Angie Himes, Store Manager, participated for the employer. Employer Exhibits One and Two were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant began work on April 7, 2008, and last worked as a part-time cashier on January 15, 2010. The claimant was aware of the employer policies regarding unauthorized removal of company property and employee purchase of products while on duty. The claimant had been present when Manager Himes discharged an employee for consuming an employer product without paying for it.

Manager Himes found a pizza box in the kitchen that had about two and one-half slices that when full contains six. She confronted the claimant and another employee about eating the pizza without paying for it. When the manager stated she could review a video security tape, both the claimant and the other employee declined. Although the claimant stated he paid for one piece, he acknowledged that he had eaten another without paying for it. Both employees were discharged for violation of company policy that is considered theft.

The claimant was not available when called for the hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

The administrative law judge concludes that the employer has established misconduct in the discharge of the claimant on January 15, 2010, for violation of company policy.

Since the claimant knew the employer policy and personally witnessed his manager enforcing it when terminating an employee, it was job disqualifying misconduct for him to consume employer product on duty without first paying for it.

DECISION:

The decision of the representative dated February 5, 2010 reference 01, is reversed. The claimant was discharged for misconduct in connection with employment on January 15, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs