IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JERMAINE AUTRY Claimant	**APPEAL NO. 14A-UI-00526-HT**
	ADMINISTRATIVE LAW JUDGE DECISION
COCA-COLA ENTERPRISES Employer	
	OC: 12/01/13 **Claimant: Respondent (1)**

Section 96.5(2)a – Discharge
Section 96.3(7) – Overpayment
871 IAC 24.10 – Employer Participation

STATEMENT OF THE CASE:

The employer, Coca-Cola Enterprises, filed an appeal from a decision dated January 6, 2014, reference 01. The decision allowed benefits to the claimant, Jermaine Autry. After due notice was issued, a hearing was held by telephone conference call on February 7, 2014. The claimant participated on his own behalf. The employer participated by Distribution Center Manager Wade Herringer. Exhibit One was admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits, whether the claimant is overpaid unemployment insurance benefits and whether the employer's account is charged due to non-participation at the fact-finding interview.

FINDINGS OF FACT:

Jermaine Autry was employed by Coca-Cola from April 23, 2013 until November 7, 2013 as a part-time general laborer.

The employer received reports from two grocery stores that the claimant may have been involved in redeeming cans in large volumes which had already been redeemed by Coca-Cola from other sources. The employer contacted the security department and an investigation was conducted.

The security officer watched the parking lot on the evening of October 30, 2013, and saw two pickup trucks with bags of bottles and cans in them. Another employee left the parking lot with his truck and the security guard took a picture. The guard then saw the claimant on his cell phone after which he removed all the bags of cans and bottles from his truck and left.

The employer produced a written statement allegedly from Mr. Autry, in which he admitted to taking the cans and bottles. It was signed on October 31, 2013. But the claimant denies he met with the employer representatives on that date or that he signed the document.

Mr. Autry stated he did not take the cans and bottles and the bags were put in his truck by a co-worker as a joke. He returned the bags before leaving because he did not want them.

He was discharged by the employer subsequent to the investigation and after the matter was referred to the corporate human resources and legal department.

The employer did participate in the fact-finding interview.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The claimant has denied signing the confession statement or that he had taken the bags and cans to redeem them a second time. The employer did not produce any testimony from the two individuals whose signatures appear on the statement attributed to Mr. Autry to verify they were present when the claimant actually signed it. The employer did not produce any evidence as to how the

representatives from the grocery stores indicated the claimant as "person of interest" in the redemption scheme.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety,* 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated January 6, 2014, reference 03, is affirmed. Jermaine Autry is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css