

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID A WALLACE**  
Claimant

**APPEAL NO. 11A-UI-09529-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORES**  
Employer

**OC: 05/29/11  
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 12, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 11, 2011. Claimant David Wallace participated. Karen Fillinger, Area Supervisor, represented the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: David Wallace was employed by Casey's from 2007 until June 1, 2011, when Area Supervisor Karen Fillinger and District Manager Lucy Thomas discharged him from the employment. From April 2009 until the end of the employment, Mr. Wallace was the store manager for a Casey's store in Burlington. From May 1, 2010, to the end of the employment, Ms. Fillinger was Mr. Wallace's immediate supervisor.

The final matters that triggered the discharge concerned absences on May 27 and a \$21.00 cash overage in the daily deposit for May 28, 2011. Mr. Wallace's spouse suffers from chronic illness and had undergone a liver and kidney transplant in November 2010. Mr. Wallace was approved for intermittent leave under the Family and Medical Leave Act so that he could assist his wife with getting to and from medical appointments. Prior to Mr. Wallace's absence from a manager's meeting on May 20, 2011, Mr. Wallace and Ms. Fillinger had an agreement that Mr. Wallace could simply take the time he needed without providing notice of each instance when he needed to be absent to attend to his wife's medical needs. Mr. Wallace was expected to make sure his store was staffed during his absences.

On May 20, Mr. Wallace arrived late for the managers' meeting because his van broke down as he and his wife were returning from a doctor appointment. Mr. Wallace was half a mile from home when his van's engine stopped working. Mr. Wallace contacted an auto service and the

auto service was able to get the vehicle restarted. The managers' meeting was set for noon. At 11:59 a.m., Mr. Wallace telephoned Ms. Fillinger on her cell phone and left a message that he was running late. Mr. Wallace appeared for the meeting at 12:30 p.m., at which time Ms. Fillinger instructed him to go to his store instead. Ms. Fillinger did not see that she had a voice mail message from Mr. Wallace or listen to the message until after Mr. Wallace had appeared late for the meeting and after Ms. Fillinger had sent him away.

After the May 20 late arrival, Ms. Fillinger told Mr. Wallace that he would thereafter be required to provide her with prior notice, by phone or by e-mail, of dates and times he needed to be absent from work to attend to his wife's medical matters. On May 27, Mr. Wallace left his store at 3:30 p.m. to take his wife to an appointment to get an M.R.I. Mr. Wallace was on the schedule to work until 4:00 p.m. that day. Mr. Wallace did not provide Ms. Fillinger with prior notice that he would be leaving his store half an hour early. On May 31, Ms. Fillinger went to Mr. Wallace's store, reviewed his clock in and clock out times, and noted the early departure on May 27.

Mr. Wallace's duties included responsibility for completing the End of Day Report, or Daysheet. That involved accounting for all sales, cash drops, safe drops and making certain that revenue on hand matched the record of transactions for that day. Mr. Wallace also shared responsibility for making regular bank deposits. On May 31, 2011, Ms. Fillinger finalized accounting records at Mr. Wallace's store and took money to the bank. There were three daily deposits that needed to be deposited at the bank. Bank bags for two of the deposits had already been taken to the bank, but the actual deposit transactions had not yet occurred. Ms. Fillinger took the third deposit with her. Though the Daysheets for all three days did not indicate any discrepancies, the daily deposit taken to the bank for May 28 was \$21.00 more than the deposit amount referenced on the associated Daysheet. Mr. Wallace had not finalized the deposit for May 28, had not taken that deposit to the bank, and was unaware of any problem with the Daysheet or the deposit until Ms. Fillinger asserted at the time of his discharge that there was \$21.00 overage. Ms. Fillinger concluded that Mr. Wallace failed to detect a discrepancy at the time he prepared the Daysheet.

In making the decision to discharge Mr. Wallace from the employment, Ms. Fillinger considered prior bookkeeping errors or discrepancies. In January 2011, Ms. Fillinger had audited the Daysheets and daily deposits for December 23, 24, and 25. The records for December 25 indicated a \$300.00 shortage and/or bookkeeping error. Mr. Wallace had recorded a \$300.00 shift drop on December 25 that might have been the source of the error. The error was first noted by the assistant manager on May 28, who brought the matter to Mr. Wallace's attention. The assistant manager had prepared the Daysheets for December 25 and 26. As soon as the assistant manager brought the bookkeeping discrepancy to Mr. Wallace's attention, Mr. Wallace contacted Ms. Fillinger to report the discrepancy. The employer did not suspect foul play, but was never able to discern what caused the \$300.00 discrepancy and/or what happened to the \$300.00.

In making the decision to discharge Mr. Wallace from the employment, Ms. Fillinger considered a reprimand she had issued to Mr. Wallace on April 11, 2011 in connection with a \$100.00 overage. Ms. Fillinger does not recall the date of the overage. The employer's policies required that Mr. Wallace notify Ms. Fillinger of any discrepancy in the daily bookkeeping that exceeded \$50.00. Mr. Wallace had waited a day to report the discrepancy to Ms. Fillinger under the belief that the source of the error would be revealed, and the error corrected, once the next day's books were settled. As soon as Mr. Wallace discerned that would not be the case, Mr. Wallace did notify Ms. Fillinger of the variance.

When Mr. Wallace appeared for work on June 1, Ms. Fillinger and another store manager met him in the parking lot and Ms. Fillinger discharged him from the employment.

### **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 in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The weight of the evidence in the record fails to establish misconduct in connection with the employment. The administrative law judge will first address the attendance matters. The evidence establishes that Mr. Wallace was late for the May 20 manager's meeting due to matters beyond his control and notified the employer prior to the start of the meeting that he would be late. That absence was an excused absence under the applicable law. The fact that Ms. Fillinger did not observe that she had a timely message from Mr. Wallace until later would not prevent the absence from being an excused absence under the applicable law. The evidence establishes that Mr. Wallace's early departure on May 27 to take his wife to a medical appointment was an unexcused absence under the applicable law. Despite the prior arrangement, Mr. Wallace knew prior to May 27 that Ms. Fillinger now wanted him to provide advance notice of any time he needed to take from work to attend to his wife's medical issues. Mr. Wallace left half an hour early without giving notice. Mr. Wallace's single unexcused absence would not be enough to establish misconduct in connection with the employment that would disqualify him for unemployment insurance benefits. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

The administrative law judge will now address the bookkeeping issues. The final bookkeeping discrepancy concerned the deposit for May 28. While Mr. Wallace prepared the Daysheet for that day, he did not finalize the deposit and did not take it to the bank. Mr. Wallace testified, credibly, that as far as he knew, everything was okay at the time he put the money in the deposit bag. The evidence is insufficient to establish that Mr. Wallace caused or contributed to the \$21.00 overage. The evidence suggests the error may just as easily have been caused by whoever finalized the deposit and took it to the bank. Thus the evidence fails to establish a current act of misconduct in connection with the bookkeeping issues. The evidence presents the same sort of problem with the much larger discrepancy concerning the December 25, 2010 deposit. The employer's practice of having more than one person involved in the daily accounting and depositing procedure makes it difficult to assign the error to a single person involved in that process. The evidence indicates that Mr. Wallace promptly reported the problem to Ms. Fillinger as soon as he became aware of it. That indicates good faith on the part of Mr. Wallace. Even if Mr. Wallace was responsible for one or both errors from December and May, a reasonable person would expect, given the nature of the business and the employer's bookkeeping practices, that a bookkeeping error might occur of time to time. That would not be evidence of misconduct. With regard to the \$100.00 overage in April 2011, the evidence

indicates that Mr. Wallace made a good faith error in judgment by waiting a single day to determine whether he could ferret out the source of the error and correct it before he reported the variance to Ms. Fillinger. Though Mr. Wallace neglected to follow the employer's policy in that instance, that isolated incident of negligence would not be sufficient to establish misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Wallace was discharged for no disqualifying reason. Accordingly, Mr. Wallace is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Wallace.

**DECISION:**

The Agency representative's July 12, 2011, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs