

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZACH J WAGENKNECHT**  
Claimant

**APPEAL NO. 08A-UI-01838-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 01/27/08 R: 03  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Fareway Stores, Inc. (employer) appealed a representative's February 14, 2008 decision (reference 01) that concluded Zach J. Wagenknecht (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 10, 2008. The claimant participated in the hearing with his father, Jim. Dave Waite, the store manager, and Kim Garland appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 14, 2001. The claimant worked part time and performed various jobs. Waite supervised the claimant.

The employer's policy requires employees to purchase all food or drinks consumed during a break before the employee went on break or consumed the product. During his employment, the claimant understood when lines were long, employees could pay for food or drinks consumed after a break or before the employee went home.

Prior to January 16, the claimant's job was not jeopardy. On January 17, an employee told Waite she suspected the claimant had not paid for food and pop he had on a break on January 16, but was positive he had not purchased the food and pop he consumed during his January 17 break. The employee reported this after the claimant left work.

Waite called the claimant back to work on January 17. When Waite asked the claimant if he had paid for the food and pop he consumed at his break on January 17, the claimant admitted he had forgotten to do so. Waite then asked if he had paid for the food and pop he consumed on January 16. The claimant told him he had not. Since the claimant had not paid for food and pop he had consumed for two consecutive days, the employer discharged him instead of giving him a written warning or any other discipline.

The claimant established a claim for unemployment insurance benefits during the week of January 27, 2008. He filed claims for the weeks ending February 2 through March 1, 2008. The claimant has received \$562.00 in benefits for these weeks.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

This case revolves around the witnesses' credibility as to what was said when the claimant returned to work on January 17, 2008. The claimant has more to lose than the employer and the employer did not know if claimant paid for his food and pop on January 16. The employer's testimony that the claimant admitted he had not paid for his food and pop on January 16 is more credible than the claimant's January 17 testimony that he paid for the food and pop before he left work on January 16. If the claimant actually paid for the January 16 items, it would be reasonable for him to have pursued this point with Waite on January 17. When an employee does not follow the employer's policy, it becomes more difficult for an employee to prove he has paid for the items he consumed. Without a witness to verify that the claimant paid for his food and pop on January 16, the facts do not support the claimant's assertion. A preponderance of the evidence establishes the claimant did not pay for consumable products on January 16 or 17.

Even though the claimant did not pay for the items, the next issue to address is whether he intentionally disregarded the employer's policy. Since the claimant did not pay for the food and pop he had at work for **two** consecutive days, the evidence indicates he intentionally disregarded the employer's interests. The claimant intentionally disregarded the employer's policy about paying for consumable items before he went on break. Even if the checkout lines were long both days, which is questionable, the claimant could have waited in line or purchased the food and pop at another location. The claimant understood the policy, so it was not

necessary for the employer to warn him about violating the employer's policy. Based on the facts in this case, the employer discharged the claimant for reasons constituting work-connected misconduct. As of January 27, 2008, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending February 2 through March 1. He has been overpaid \$562.00 in benefits for these weeks.

**DECISION:**

The representative's February 14, 2008 decision (reference 01) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 27, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$562.00 in benefits he received for the weeks ending February 2 through March 1, 2008.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw