

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOUGLAS T FLEENER
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 20A-UI-02024-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/02/20
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's February 26, 2020, decision (reference 01) that concluded Douglas Fleener (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2020. The claimant was represented by John Graupmann, Legal Assistant, and participated personally. The employer participated by Dawn Erickson, Store Manager.

The employer offered and Exhibit One was received into evidence. The claimant offered and Exhibits A and B were received into evidence. The administrative law judge took official notice of the administrative file.

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 in August 2017, as a full-time store employee. He signed for receipt of the employer's handbook on April 31, 2018. The claimant was diagnosed with anxiety and depression early in his life. He was provided with insurance through the State of Iowa but lost that insurance when his earnings with the employer exceeded the threshold amount for eligibility. As of December 2019, he was unable to purchase medications to help his conditions. The store manager was aware of his mental health needs and met with county health officials.

On May 2, 2019, the employer issued the claimant a written warning for making a comment about a customer's weight. The claimant denied making the comment. The employer notified the claimant that further infractions could result in termination from employment.

ONLINE RESOURCES:

The claimant had some issues with a co-worker. She used profanity with the claimant and once threatened to punch the claimant in the throat. The co-worker apologized and the claimant said, "Don't worry. Let's not let this interfere with work". He did not report her to the store manager.

On February 2, 2020, the claimant accidentally threw some baked goods away at work. He was recording the situation in the production planner when the co-worker approached and stood approximately ten feet away. She asked the claimant the same question repeatedly: Why did you throw them away? The claimant repeatedly told her not to worry. He would take care of it. After approximately the third time, he threw the pencil at the sandwich stand and said, "Please leave me alone and let me do my job." The co-worker said she was going to talk to the store manager about him and left the area. Later, he tried to talk to the co-worker. She said she would speak to the store manager.

The store manager heard the co-worker's complaint and watched a video of the incident. She did not ask the claimant about the incident. On February 5, 2020, the store manager terminated the claimant for throwing a pencil and being rude to the co-worker. The co-worker was not reprimanded.

The claimant filed for unemployment insurance benefits with an effective date of February 2, 2020. The employer's representative, Samantha Lewis, indicated it would participate in the fact-finding interview on February 25, 2020, by documentation. The fact finder called but Ms. Lewis but she was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer's witness did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not have firsthand knowledge of the events leading to the separation.

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

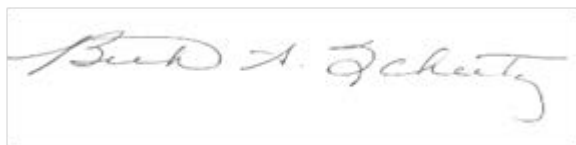
limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal 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).

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The claimant was provoked by a co-worker and the claimant responded by tossing a pencil and asking to be left alone. The claimant's behavior may have been unsatisfactory but it did not rise to the level of misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's February 26, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

April 22, 2020
Decision Dated and Mailed

bas/scn