

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAVID HENRY**  
Claimant

**APPEAL 19A-UI-04285-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 04/28/19  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

On May 24, 2019, the employer filed an appeal from the May 15, 2019, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 20, 2019. Claimant participated and testified. Employer participated through Area Supervisor Felisha Gates. Employer's Exhibits 1 through 3 and claimant's Exhibits A and B were received into evidence.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid benefits?  
Should benefits be repaid by claimant due to the employer's participation in the fact finding?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 10, 2016. Claimant last worked as a full-time store manager. Claimant was separated from employment on April 29, 2019, when he was discharged.

On April 27, 2019, Gates received information regarding an interaction claimant had with one of his assistant manager's the prior day. According to Gates the issue was reported to her by the assistant manager and some customers who happened to be in another store she was visiting. Gates did not know who the customers were. It was reported to Gates that claimant had confronted his assistant manager after he learned she would be transferring to another store the following week. It was reported that claimant had told the assistant manager she would be unhappy at the other store, would not be allowed to return to his store, and he felt Gates was taking the situation as an opportunity to undermine him.

Claimant admitted to having a conversation with his assistant manager and of accusing Gates of trying to undermine his authority and set him up for failure. Claimant explained he felt this way because generally a store manager is the first person to be told of a transfer and in this case, he was the last person told, even behind other store employees. Claimant denied yelling at the assistant manager or telling her she would be unhappy or fail at the other store. Rather, claimant stated he was attempting to build the assistant manager up in an attempt to get her to stay. This conversation occurred on the side of the building while claimant and the assistant manager were taking a smoke break. Claimant did not see any customers around.

Prior to this incident, claimant had received two warnings regarding his professionalism and the manner in which he addressed employees. (Exhibits 1 and 2). The most recent warning, issued on January 14, 2019, advised claimant that further incidents would lead to his discharge from employment. Prior to Gates becoming claimant's area supervisor in July 2018, there are no records of any complaints regarding claimant's treatment of his employees and he had no prior disciplinary action. Following the April incident, the decision was made to discharge claimant from employment. (Exhibit 3).

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 28, 2019. The claimant filed for and received a total of \$2,645.00 in unemployment insurance benefits for the weeks between April 28 and June 15, 2019. Both the employer and the claimant participated in a fact finding interview regarding the separation on May 14, 2019. The fact finder determined claimant qualified for benefits.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. Claimant was the only witness who was able to present first-hand testimony regarding the April 26, 2019 incident, which led to his discharge from employment. The employer's testimony was based entirely on second-hand information. The employer's witness was not even able to identify the customer's to whom she spoke and no written customer service complaint was filed.

The claimant acknowledged he was frustrated with the situation and spoke to his assistant manager about staying. However, claimant testified he did this off to the side of the building,

while on break, and no customers were around. Such a conversation would be reasonable for anyone in claimant's position. As such, the employer has not established the claimant engaged in misconduct and benefits are allowed, provided he is otherwise eligible. As benefits are allowed, the issues of overpayment and participation are moot.

**DECISION:**

The May 15, 2019, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. The issues of overpayment and participation are moot.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs