

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD K AUSTIN
Claimant

APPEAL NO. 09A-UI-01411-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 12/14/08 R: 02
Claimant: Respondent (1)

Section 96-5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 20, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on February 17, 2009. The claimant participated. The employer participated by Bill Brauer, distribution center manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from August 2006 until August 30, 2008, when he was discharged from employment. Mr. Austin held the position of heavy duty order filler in the company's warehouse and was employed on a full-time basis.

The claimant sustained a work injury on or about May 30, 2008, and was unable to work for a period of time and was under the care of a physician. Subsequently, the claimant was released to perform light-duty work; however, the employer had no light-duty positions available to Mr. Austin. At the conclusion of the time available to the claimant under the Family Medical Leave Act, Mr. Austin was discharged from employment although he was not yet released to return to full duty by his physician.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Austin was discharged for intentional misconduct in connection with the employment. It does not.

The evidence in the record establishes that the claimant was discharged when he was unable to return to full-time employment without limitations after sustaining a work injury. Mr. Austin was

discharged from his employment when he had exhausted all time available to him under the Family Medical Leave Act and an additional 15-day extended leave that had been provided by the company. At the time of the claimant's discharge, he was released to return to light-duty work; however, the employer could not accommodate the claimant's light-duty restrictions. When the claimant was not able to return to full-time work without restrictions, he was discharged from work.

The evidence in the record clearly establishes that the claimant did not engage in intentional disqualifying misconduct. While the decision to terminate Mr. Austin may have been a sound decision from a management viewpoint, the claimant was not discharged for conduct that showed an intentional disregard for the employer's interests or standards of behavior. The claimant was injured and was unable to return to work.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

For the above-stated reasons, the administrative law judge concludes the claimant was not discharged for intentional misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 20, 2009, reference 01, is affirmed. The claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw