

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**DENISE R RAIRDIN**

Claimant

and

**CASEY'S MARKETING COMPANY**

Employer

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**HEARING NUMBER: 15B-UI-09497**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.5-2-A**

**DECISION**

**UNEMPLOYMENT BENEFITS ARE DENIED**

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

**FINDINGS OF FACT:**

The Claimant, Denise R. Rairdin, worked for Casey's Marketing Co. from August 2, 2007 through April 20, 2015 as a full-time assistant manager. The Employer has a policy that requires employees to purchase food items prior to consumption while on the job. Employees are allowed a maximum of \$4.00 daily food purchase, which is inclusive of a 50% discount for food, with the exception of fountain drinks that are free so long as all items are rung up on the register. Employees are to keep the receipt and cashier's paperwork stapled together. The Claimant had knowledge of this policy based on her signature in acknowledgement of receipt.

During a routine surveillance video watch on April 17, 2015, the Employer observed footage of Ms. Rairdin taking a breakfast burrito out of the warmer and eating it. There was no receipt or cashier's paperwork to show that the food had been paid for; nor was there anything on the video to show that the store was busy at that time. The Employer terminated the Claimant on April 20, 2015 for violating the company's food policy.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2013) provides:

*Discharge for Misconduct.* If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)). 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 substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Employer's version of events.

The Claimant was a long term employee who admitted having knowledge of the proper procedure for paying for food items. The Claimant's failure to pay for her breakfast burrito on April 17<sup>th</sup> was allegedly in keeping with the culture of employees being allowed to pay for items at the end of their shift. However, Ms. Rairdin did not even do this if we are to believe that the food policy was so lax. Perhaps, had the Claimant paid for the item at the end of her shift, she would still be employed. But given the evidence in this case, we conclude that the Employer has satisfied its burden of proving by a preponderance of the evidence that the Claimant violated a known company rule for which termination was justified.

**DECISION:**

The administrative law judge's decision dated September 11, 2015 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying reasons. Accordingly, she is denied benefits until such time she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. See, Iowa Code section 96.5(2)"a".

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Kim D. Schmett

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Ashley R. Koopmans

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James M. Strohman

AMG/fnv