

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID C BLACK

Claimant

APPEAL NO. 09A-UI-02666-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S SERVICES COMPANY

Employer

OC: 01/18/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated February 9, 2009, reference 01, which denied benefits based upon his separation from Casey's Services Company. After due notice was issued, a hearing was scheduled for and held on March 16, 2009. The claimant participated personally. The employer participated by Mr. Tom Hamm, Services Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered the evidence in the record, finds: The claimant worked for this employer from May 8, 2006 until January 19, 2009 as a full-time heating and air conditioning installation technician. His immediate supervisor was Bruce Winkleman.

A decision was made to terminate Mr. Black from his employment based upon a report of a field supervisor who had indicated that Mr. Black had not followed work-related directives.

Mr. Black had been assigned to prepare a walk-in freezer unit at a company facility for renovation. The claimant had initially been instructed to remove all food items from the walk-in cooler. Subsequently the store manager indicated that he desired some items to be left in the cooler because it was necessary to leave them there because an elderly cook needed access to them the following morning. The store manager conferred with the field supervisor and Mr. Black followed the directives by removing all of the food items except for those that had been specified to be left. Mr. Black had not been warned or counseled for similar offenses in the past. Although the claimant denied the allegations at a discharge meeting held between himself and Mr. Hamm, a decision was made nevertheless to terminate Mr. Black from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to deny unemployment insurance benefits. It does not.

The evidence in the record establishes that the employer made a decision to terminate Mr. Black based upon the statements of another who indicated Mr. Black had not followed a work-related directive that had been given to him. Prior to termination, Mr. Hamm, the services manager, met with Mr. Black. Although Mr. Black denied the allegation of being insubordinate or refusing to perform the work-related duty, he nevertheless was discharged from employment.

In this matter the employer has relied solely on hearsay evidence in support of its position that Mr. Black was discharged for disqualifying reasons. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn direct testimony. In this matter Mr. Black participated personally and testified under oath that he did, in fact, follow the work-related directive and that any food items left in the cooler were left based upon an agreement between the parties because the food items were necessary for an elderly cook to use the following morning. Based upon the claimant's sworn direct testimony and the absence of any evidence of equal weight, either contradicting and/or explaining the claimant's testimony, the administrative law judge finds the evidence to be in support of the claimant.

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.

For the reasons stated herein, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing claimant's conduct sufficient to dispel the claimant from receipt of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 9, 2009, reference 01, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs