

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ZACHARY W RUTH
Claimant

APPEAL NO. 12A-UI-03549-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/12/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Casey's, filed an appeal from a decision dated March 29, 2012, reference 02. The decision allowed benefits to the claimant, Zachary Ruth. After due notice was issued, a hearing was held by telephone conference call on April 24, 2012. The claimant participated on his own behalf. The employer participated by Manager Kathy Brown.

ISSUE:

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

FINDINGS OF FACT:

Zachary Ruth was employed by Casey's from April 11, 2011 until February 9, 2012 as a part-time cook. He was given a first written warning on July 18, 2011, for leaving condiment containers out and dirty dishes in the sink. The second warning was given September 7, 2011, for failing to restock the food containers so pizzas could be made by the oncoming shift, and leaving the prep table dirty. That warning stated the next step would be discharge.

On February 7, 2012, Manager Kathy Brown again found the prep table dirty, the condiments left out and, on the surveillance video, Mr. Ruth has spent a total of 45 minutes of his shift chatting with the cashier rather than doing his work. The claimant maintained it was okay to talk to other employees even if your work was not done, as long as business was slow. The employer stated there was always cleaning and work to do even if an employee's priority job duties were done. In addition, he was engaging in unsafe work practices by sitting on top of an automatic dough mixer which stands more than four feet off the floor, and is not designed to be used as a place to sit.

The final warning was issued on February 9, 2012, and Mr. Ruth was fired. He maintained the discharge was because he was "singled out" when his mother was discharged previously. But his mother was re-hired and eventually resigned on her own to take another job.

Zachary Ruth has received unemployment benefits since filing a claim with an effective date of February 12, 2012.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant has given a good many excuses for his written warnings, He maintains his work was always done and done well, but this cannot be supported by the record. His claim his work was done and done well was not mentioned in any of the warnings he received even though there is a spot on each warning where he may respond. He also claimed he was not trained well at first but the manager pointed out his work was satisfactory for some time before he was first warned in July 2011.

Mr. Ruth would rather make excuses and false claims about his work being done rather than actually do the work as required. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of March 29, 2012, reference 02, is reversed. Zachary Ruth is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css