

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RANDALL W ALLEN**  
Claimant

**CASEY'S MARKETING COMPANY**  
Employer

**APPEAL 20A-UI-02023-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/09/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment  
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's February 26, 2020, decision (reference 01) that concluded Randall Allen (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2020. The claimant participated personally. The employer participated by Cassandra Rice, Store Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 28, 2018, as a full-time store team member. He signed for receipt of the employer's handbook on December 28, 2018. The employer did not issue the claimant any warnings during his employment.

On the evening of February 9, 2020, the claimant was working and the store was busy. Co-worker Steve was out delivering. On February 10, 2020, a customer complained that on February 9, 2020, the claimant said he could not help the customer and hung up. The customer called again and there was no answer. The claimant did not know anything about this call. The employer terminated the claimant based on the customer's complaint and Co-worker Steve's indication that the claimant was rude.

The claimant filed for unemployment insurance benefits with an effective date of February 9, 2020. The employer's representative, Samantha Lewis, indicated it would participate in the fact-finding interview on February 25, 2020, by documentation. The fact finder called but Ms. Lewis

was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer's witness did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not have firsthand knowledge of the events leading to the separation.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

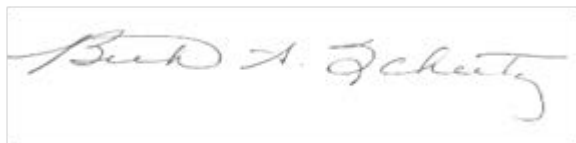
An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face

discharge, appropriate (preferably written), detailed, and reasonable notice should be given. In this case, no warnings were issued to the claimant.

The employer took the statement of the claimant, the customer, and Co-worker Steve. Co-worker Steve may not have been present for the call. The statement of the customer does not carry as much weight as the claimant's live testimony because the testimony is under oath and the witness can be questioned. The employer did not provide sufficient evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's February 26, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in cursive script, which appears to read "Beth A. Scheetz".

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Beth A. Scheetz  
Administrative Law Judge

April 22, 2020  
Decision Dated and Mailed

bas/scn