

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARL BEERY JR**  
Claimant

**APPEAL NO. 08A-UI-03017-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**  
Employer

**OC: 02/24/08 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(8) – Current Act of Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated March 17, 2008, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 10, 2008. Although duly notified claimant failed to respond to the hearing notice and did not participate. The employer participated by Jerolyn Wilson, Store Manager.

**ISSUE:**

At issue in this matter is whether the claimant was discharged for a current act of misconduct in connection with his work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer from September 12, 2006 until January 16, 2008 when he was discharged from employment. Mr. Beery last held the position of assistant manager and was employed on a full-time basis. Prior to being employed by the company Mr. Beery had cashed some personal checks at a Casey's location that were not paid by the bank. Subsequently in September 2006, the claimant was hired by Ms. Wilson to work in a different Casey's facility. In July of 2007, the subject of the insufficient funds or non-negotiable checks was brought to the claimant's attention and he agreed to make restitution to the Casey Marketing Company. When the store manager determined on January 15, 2008 that the claimant had not repaid the amount that he had accrued in insufficient or no funds checks prior to his employment he was discharged from his job with the company. It is the employer's position that the claimant agreed to make repayment but did not do so.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence establishes that the claimant was discharged for a current act of misconduct. It does not. The evidence in the

record indicates that Mr. Beery may have negotiated insufficient fund checks or no account checks with the company in the year 2005 before his employment began with the company. The claimant was later hired September 2006 and continued in his employment until he was discharged on January 16, 2008. During the interim the non-negotiable checks in the amount of \$264.57 were brought to the claimant's attention and he had personally agreed with the store manager to begin a repayment plan. When the store manager determined on January 15, 2008 that the claimant had not repaid the amount as he had agreed to do with the manager he was discharged for the debt that had accrued prior to his employment with the company. Ms. Wilson testified that she was unsure as to whether the company would authorize a repayment plan but had entered into that agreement personally with the claimant.

For the reasons stated herein the administrative law judge concludes that the claimant was not discharged on January 16, 2008 for a current act of misconduct in connection with his work. The claimant had accrued a debt to the company itself for insufficient fund checks prior to his employment but nonetheless was hired by the company. The claimant was not discharged in May of 2007 when the checks came to the attention of the company but retained as an employee. The administrative law judge concludes that the employer did not sufficiently monitor the claimant's restitution as agreed in May of 2007 and therefore the claimant's discharge that occurred in January of 2008 was too far removed from the last act that could be considered to have any nexus or connection with the claimant's employment.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

For the reasons stated herein the administrative law judge must conclude that the claimant was discharged under nondisqualifying conditions. The decision to terminate Mr. Beery may have been a sound decision from a management viewpoint but intentional disqualifying misconduct at the time of discharge in connection with the employment has not been shown.

**DECISION:**

The representative's decision dated March 17, 2008, reference 01, is hereby affirmed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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