

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L TOMPKINS

Claimant

APPEAL NO: 18A-UI-11406-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 11/04/18

Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Michael Tompkins, the claimant filed a timely appeal from a representative's unemployment insurance decision dated November 20, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant was discharged from work on October 31, 2018 for insubordination in connection with his work. After due notice was provided, a telephone hearing was held on December 7, 2018. Claimant participated. Employer participated by Ms. Treva Gilliam, Manager.

ISSUE:

The issue is whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Michael Tompkins was employed by Casey's Marketing Company from July 25, 2012 until August 31, 2018 when he was discharged from employment. Mr. Tompkins was employed as a full-time clerk/cashier/kitchen worker and was paid by the hour. His immediate supervisor was the store manager, Ms. Treva Gilliam.

Mr. Tompkins was discharged on October 31, 2018 based upon his continuing refusal to perform numerous reasonable and work-related duties that were part of his daily work or specifically requested by the store manager. Mr. Tompkins had been warned on approximately 11 occasions during the course of his employment for failure to properly perform a variety of work duties. The claimant had also been warned specifically to perform the side work that was required of employees in the job position that Mr. Tompkins held.

On October 24, 2018, Mr. Tompkins was given a written warning when he failed to take appropriate action to prevent approximately \$1,000.00 worth of ice cream products from being lost when a store freezer began to malfunction during Mr. Tompkins work shift. Instead of telephoning management or attempting to move the ice cream to a different cooler, Mr. Tompkins had elected to only leave a note for the next day's shift workers telling them that

the store freezer was not working. Mr. Tompkins was also warned on numerous occasions to follow company policy regarding check cashing, wearing unauthorized items while on duty, and for failure to monitor gas pumps, resulting in drive offs. Mr. Tompkins received specific warnings from the company about failure to perform his shift duties on June 18, 2017, September 22, 2015, December 25, 2013 and March 4, 2014.

Although Mr. Tompkins had been repeatedly warned by the company, he nevertheless continued to show an unwillingness to perform shift duties or to assist other hourly employees. The claimant continued to be non-responsive to work directives by the store manager and other assistant managers. The company had received numerous complaints from other workers about Mr. Tompkins unwillingness to help and his ongoing failure to follow work instructions given to him by management. One week before the claimant's discharge, the store manager had specifically met with Mr. Tompkins and informed him the company was giving him a final chance to improve his work demeanor or face discharge.

The final incident that resulted in the claimant's termination from employment took place when company management had received complaints from employees about Mr. Tompkins unwillingness to perform his duties during his work shifts on Sunday, October 21 and Monday, October 29, 2018. Ms. Gilliam, the store manager investigated the complaints by reviewing company security tapes for the dates in question. The security tapes revealed that Mr. Tompkins did not complete his shift duties and he had remained idle during the majority of the shifts. Mr. Tompkins had been urged by other employees on those dates to perform his duties and asked by other workers to assist; the claimant did not do so and made sarcastic remarks to the other employees as he refused their requests. Mr. Tompkins had not completed necessary shift work on those dates and had not completed any of the additional tasks that had been given to him. There was sufficient time to complete the duties, but Mr. Tompkins had elected to remain idle and spent time visiting with others.

Based upon the numerous warnings that had been previously served upon Mr. Tompkins, the specific verbal instructions that the store manager had given him one week before, and the claimant's continuing refusal to perform the duties associated with his job, a decision was made to discharge Mr. Tompkins from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes disqualifying work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges the claimant for reasons that constitute work-connected misconduct. Iowa Code § 96.5(2)a. 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 Dep't of Job Serv.*, 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 willful wrongdoing or repeated carelessness or negligence that equals to willful misconduct in culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes misconduct amounts to a deliberate acts and a material breach of duties and obligations arising out of worker's contract of employment. Misconduct is a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees or is an intentional and substantial disregard of the employer's interests and standards of behavior that the employer has a reasonable right to expect of its employees. Inefficiency, unsatisfactory conduct, failure in good performance as a result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances or good faith errors in judgment or discretion and are not misconduct. 871 IAC-24.32(1)(a).

Warnings weigh heavily towards the finding of intentional conduct. Willful misconduct can be established when an employee disobeys reasonable work instructions of the employer. *Meyer v. Iowa Department of Job Service*, 373 N.W.2d 507, (Iowa 1985). Repeated failure to follow an employer's instructions in the performance of duties is misconduct in connection with the work. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

In the case at hand, the employer's repeated requests for the claimant to complete side work and to stay reasonably busy performing a multitude of tasks that were work related and reasonable, the evidence in the record establishes that Mr. Tompkins repeatedly displayed a

blatant disregard for the employer's interests and standards of behavior. Mr. Tompkins continued to disregard warnings that had been given to him, even after he had been put on final notice that his job was in jeopardy. Accordingly, benefits are denied until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

DECISION:

The representative's unemployment insurance decision dated November 20, 2018, reference 01 is affirmed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn