

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID D MALM
Claimant

APPEAL NO. 11A-UI-09210-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 09/13/09
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 11, 2011 (reference 08) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on August 4, 2011. Claimant participated. Employer participated through Store Manager Harold Hughes.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a clerk from November 2010 and was separated from employment on June 2, 2011. His last day of work was May 31, 2011. He ate a pickle while working, did not have a receipt for it, and admitted he had not paid for it. He offered to pay for the pickle after he was confronted. He had received notice of the employer's food consumption policy, which requires payment for the product before consumption. (Employer's Exhibit 1, page 4) He had not been warned about the issue in the past and argued he had not eaten at work before this, but Hughes had observed him pay for food and consume it on premises before the final incident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Claimant's failure to pay for the food before he consumed it was in violation of the employer's specific policy, which contains clear warning of the consequence. His claim he had never consumed food on premises before is not credible, as employer had observed him do so. The employer's policy addressing product loss by employees is reasonable given the number of employees and the nature of the business. This was misconduct sufficient to warrant a denial of benefits.

DECISION:

The July 11, 2011 (reference 08) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw