

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A MANGEL
Claimant

APPEAL NO. 11A-UI-13975-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/18/11
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 October 13, 2011, reference 01. The decision allowed benefits to the claimant, Michael Mangel. After due notice was issued, a hearing was held by telephone conference call on November 16, 2011. The claimant participated on his own behalf. The employer participated by Store Manager Amy Miell and Sales Associate Sam Hoffman

ISSUE:

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

FINDINGS OF FACT:

Michael Mangel was employed by Casey's from July 5 until September 12, 2011 as a full-time sales associate. He had received a copy of the employer's policies at the time of hire. It is grounds for immediate discharge to consume food in the store, or take it out of the store, without first paying for it.

On September 10, 2011, Sales Associate Sam Hoffman was working in the kitchen. Part of his job duties was to remove pizza from the warmer if it had been there for more than an hour. The pizza is then thrown away and recorded as being "waste." This food listed as waste is not for consumption by employees or customers. That evening Mr. Mangel asked Mr. Hoffman to record a pizza as waste so he could eat it. Mr. Hoffman refused but the claimant took the pizza from the warmer and ate it anyway.

Mr. Hoffman called another employee, Andrew Birt, to ask him what he should do. Mr. Birt told him to notify Store Manager Amy Miell because if he did not, he could be in trouble for not doing so. On September 11, 2011, Mr. Hoffman reported the incident to the store manager. The next day when the claimant returned to work she confronted him about the report. He denied asking Mr. Hoffman to list the pizza as waste or eating it.

The employer elected to believe Mr. Hoffman's report because he had nothing to gain by reporting and everything to lose if he did not. In addition, the claimant's short period of employment had resulted in more than one verbal counseling and at least one written warning for failing to follow rules and procedures. He had everything to gain by denying the wrongdoing and she resolved the credibility issue against Mr. Mangel and discharged him.

Michael Mangel has received unemployment benefits since filing a claim with an effective date of September 18, 2011.

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 denied any and all wrongdoing which caused his discharge. The employer did provide firsthand, eyewitness testimony which contradicts the claimant's denial. The administrative law judge resolves the issue of credibility in favor of the employer's witness. Mr. Mangel did not establish any reason Mr. Hoffman would fabricate such a story about him. But it is evident Mr. Hoffman had good reason to report a breach of policy because if he did not, his job would be in jeopardy. The claimant's poor work history is also against him as he had a history of breaking policy more than once in the short period of his employment.

The claimant was discharged for theft. 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. He 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 October 13, 2011, reference 01, is reversed. Michael Mangel 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