

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEFFIAN D CHURCH
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 20A-UI-01133-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/29/19
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 January 30, 2020, decision (reference 01) that concluded Steffian Church (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 February 24, 2020. The claimant participated personally. The employer participated by Clark Middle, Store Manager, and John Douglas, Carwash 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 January 29, 2018, as a full-time carwash tunnel attendant. He signed for receipt of the employer's policies.

On January 19, 2019, the claimant was cleaning the dry room pit when an assistant manager asked him to shovel snow. He finished his work and shoveled snow about five to ten minutes later. On January 22, 2019, the employer prepared a Corrective Action Statement. The carwash manager entered his signature on January 21, 2019 (sic). The claimant's name appeared on a signature line without a date. The manager did not speak to the claimant about the incident and the claimant did not sign the document.

On November 23, 2019, the claimant arrived at work and found a note in the office saying repairs were being done to the carwash. The claimant was unsure if he should open the carwash at 7:00 a.m. because the maintenance technician would be coming to do repairs. He

set about cleaning chains and sprockets. At about noon, the carwash manager sent him a text asking why the carwash was closed. The claimant explained. The manager said the technician was there earlier and the claimant should open the carwash. The claimant opened it immediately. This was the only time the claimant delayed opening the carwash. Later, the manager showed him a written warning on the computer but did not ask the claimant to sign it. The manager wrote on the warning, "On 11/23/19 Steffian didn't open the carwash again". It stated that further infractions could result in termination from employment. The claimant did not receive a copy of the warning.

On December 24, 2019, the claimant and two co-workers were told they could leave work early. The three divided the duties. The claimant and another worker cleaned the carwash while the third worker counted the money. The three thought the carwash was clean. On December 25, 2019, the carwash manager reported to the employer that the carwash was not clean. The manager knew the claimant cleaned his section of the building because he watched a video of the claimant cleaning it. The claimant's section was fully cleaned but the claimant did not also clean the co-worker's section. On December 28, 2019, the employer terminated the claimant. The termination stated, "On 12/24/19 Steffian failed to make any effort, therefore refusing to clean the carwash."

The claimant filed for unemployment insurance benefits with an effective date of December 29, 2019, and received \$1,600.00 in benefits after the separation from employment. The employer provided the name and number of Shania Angel as the person who would participate in the fact-finding interview on January 29, 2020. The fact finder called but Ms. Angel but 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 submit the specific rule or policy that the claimant violated which caused 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).

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.

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). The employer did not provide sufficient evidence of job-related misconduct. The carwash manager indicated that he saw video of the claimant fully cleaning the carwash on December 24, 2019. Later, in the termination paperwork, the manager stated the claimant was "refusing to clean the carwash". The employer did not meet its burden of proof to show a final incident of misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

The claimant's and the employer's testimony was not the same. The administrative law judge finds the claimant's testimony to be more credible. The employer's testimony, specifically the carwash manager's testimony, was internally inconsistent.

DECISION:

The representative's January 30, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn