

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY W PULLEN
Claimant

APPEAL NO: 12A-UI-02405-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 01/22/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 1, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant did not respond to the hearing notice or participate in the hearing. Steve Moore, the general manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a full-time maintenance employee in October 2004. Moore became the general manager in August 2011.

The employer's policy, which the claimant received when he started, informs employees that the employer does not give employees any free food. The employer requires employees to pay for everything they eat and if they do not, the employer considers this as theft.

On January 2 or 3, 2012, an assistant manager saw the claimant take some food from the deli and asked him if he was going to pay for the food. The claimant said, "No. Are you going to fire me?" The claimant ate the food, but did not pay for it.

The assistant manager reported the incident to Moore. He then contacted the human resource department and asked what he should do. When Moore talked to the claimant, he did not deny he made the above statement that assistant manager reported. Since the claimant ate food without paying for it, even after the assistant manager gave him an opportunity to pay for the food, the employer discharged the claimant January 5, 2012.

The claimant established a claim for benefits during the week of January 22, 2012. He has filed for and received benefits since January 22, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the claimant's comment to the assistant manager, he knew that the employer required employees to pay for all food they consumed. The claimant intentionally failed to follow the employer's policy even after the assistant manager gave him an opportunity to pay for the food. The claimant ate the employer's food without paying for it. This conduct amounts to an intentional and substantial disregard of the employer's interest. The claimant committed work-connected misconduct. As of January 22, 2012, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits he may have received since January 22, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's March 1, 2012 determination (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 22, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible of a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw