

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BOYD P REEVES**

Claimant

**APPEAL NO. 11A-UI-09905-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

**CASEY'S GENERAL STORES**

Employer

**OC: 06/12/11**

**Claimant: Respondent (2)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 18, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 19, 2011. Claimant participated. Kim Maxheimer represented the employer. The administrative law judge took official notice of the Agency's administrative record that indicates the claimant has not received any benefits in connection with the claim that was effective June 12, 2011.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Boyd Reeves was employed by Casey's as a part-time clerk/pizza maker from June 2010 until December 14, 2010, when Store Manager Kim Maxheimer discharged him from the employment. Mr. Reeves last performed work for the employer on December 13. At the beginning of that shift, Ms. Maxheimer counseled Mr. Reeves about making certain that he got all his assigned duties done during the shift. Those duties included stocking the cooler, burnishing the floor, and otherwise making certain that the store was ready to go to the next shift.

Ms. Maxheimer discovered when she arrived on December 14 that, despite the counseling and despite the fact that Mr. Reeves had left the store on December 13 later than usual, Mr. Reeves had failed to perform the tasks Ms. Maxheimer had counseled him about at the start of the shift. Ms. Maxheimer reviewed video surveillance that showed Mr. Reeves frequently interrupting his work on December 13 to send and review personal text messages. Mr. Reeves received and responded to at least 10 text messages during his shift. The employer's written policy prohibited use of cell phones at work. Mr. Reeves was aware of the policy. Ms. Maxheimer concluded that Mr. Reeves just did not care about fulfilling the employer's needs during his shift.

In making the decision to and Mr. Reeves' employment, Ms. Maxheimer also considered an unexcused absence in October 2010.

### **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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes that Mr. Reeves neglected his assigned duties on December 13, 2010 so that he could engage in repeated intentional violation of the employer's policy prohibiting cell phone use in the workplace. Given the discussion that had just occurred at the beginning of the shift on December 13, Mr. Reeves' conduct did indeed indicate a willful disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for misconduct. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to the claimant.

Because workforce development records indicate the claimant has not received any benefits in connection with the claim that was established June 12, 2011, there is no overpayment of benefits to address.

**DECISION:**

The Agency representative's the July 18, 2011, reference 01, decision is reversed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw