

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JARROD S RAIMANN**  
Claimant

**APPEAL NO. 08A-UI-05853-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 05/25/08 R: 02**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 18, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on July 10, 2008. The claimant participated personally. The employer participated through Kim Garland, Human Resources Person, and Steve Kieffer, Loss Control Manager. The employer offered and Exhibit One was received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on October 8, 2007, as a part-time meat cutter. The claimant signed for receipt of the employer's handbook on October 3, 2007. The handbook indicates that an employee cannot wait on himself and must have a receipt for all foods that he consumes at break. The employer did not issue the claimant any warnings during his employment.

During the week of May 11, 2008, the claimant pulled meat and cheese from the meat counter and placed it on the scale. A co-worker weighed and placed the sticker on the items. The claimant ate some of the meat and cheese on break that day. He placed some of the meat and cheese in the cooler for break on May 21, 2008. On May 21, 2008, the claimant removed the items from the cooler and went to break. The co-workers told the employer that the claimant did not pay for the items that day. The claimant did not have the receipt of the food because it was purchased on a different day. The employer terminated the claimant on May 23, 2008. The employer thought the claimant took the items from the meat case on May 21, 2008, and did not pay for them.

## 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:

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. Perhaps the claimant should have been more careful about keeping receipts in his wallet for all food purchased at the grocery store that he might eat on break. The claimant's one-time failure to carry his week-old receipt may be a mistake in judgment, but it does not rise to the level of misconduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which the claimant was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

**DECISION:**

The June 18, 2008, reference 01, representative's decision is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw