

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASEY A FINK**

Claimant

**APPEAL NO. 17A-UI-11075-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 10/01/17**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Casey Fink (claimant) appealed a representative's October 19, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 16, 2017. The claimant was represented by Larry Johnson, Attorney at Law, and participated personally. The employer participated by Tammy Viet, Store Manager.

**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 March 11, 2016, as a part-time kitchen floater. He understood he was to help out in the kitchen for four hours each day. The claimant signed for receipt of the employer's handbook on March 11, 2016. The employer's policy requires employees to help each other perform tasks at work. The employer did not issue the claimant any written warnings during his employment. It talked to the claimant about attendance issues. The claimant was occasionally tardy and sometimes left early. He left his shift to take a smoking break and talk on his cellphone. The employer warned the claimant that someone else would work his hours if he did not improve his attendance.

The claimant was diagnosed with schizophrenia and notified the employer of his condition when he was hired. He had certain procedures he followed before he left his residence that readied him for meeting the public. This may have contributed to his tardiness. He believed that his condition did not interfere with his interactions or communications with co-workers.

On October 2, 2017, the claimant arrived at work forty-three minutes late. He notified the employer that he would be tardy. When the claimant arrived at work, he wanted to perform the priority work of making pizzas but the full-time worker had taken care of all of them. She asked him to do some other things but the claimant did not respond to her. The full-time worker had

made a mess when she made the pizzas and the claimant did not want to help clean it up. The claimant walked out and had a cigarette to calm down. When he returned, the claimant did not respond to the full-time worker's request for help as a way to get back at her or to get the point across that he wanted to make the pizzas. The claimant clocked out and left early.

After he left he called the store manager. The claimant told the manager that he did not like the co-worker and did not want to work with her. The manager told the claimant he needed to work his scheduled time. The claimant said he did not have to listen to the co-worker and the manager should make his schedule around the co-worker. The claimant said he did not need the job. The store manager terminated the claimant.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was 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).

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). Repeated failure to follow an

employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant did not follow instructions when he appeared for work late, left work early, took a smoke break when there was work to be done, failed to respond to a co-worker's request for help, and did not speak to a co-worker who was talking to him. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's October 19, 2017, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount 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/rvs