

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS MARSHALL
Claimant

APPEAL NO. 15A-UI-12298-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 10/04/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's October 26, 2015, decision (reference 01) that concluded Dennis Marshall (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 scheduled for December 9, 2015. The claimant was represented by Larry Stoller, Attorney at Law, and participated personally. The employer was represented by Claire Mattan, Attorney at Law, and participated by Kim Ramaekers, Area Supervisor, and Bobbie Heyer, Store Manager. The claimant offered and Exhibit A was received into evidence. Exhibit D-1 was received into evidence.

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 July 25, 2013, as a part-time store employee. The claimant signed for receipt of the employer's handbook on July 25, 2013. The handbook indicates that all food or merchandise must be paid for before it is consumed or removed from the store. The claimant keeps kosher and would eat very little of the food sold by the employer. On July 1, 2015, the employer issued the claimant a written warning for inappropriate conduct. The employer notified the claimant that further infractions could result in termination from employment.

The claimant previously worked at the Spirit Lake, Iowa, store. At that store the store manager allowed him to take the store's inedible lettuce home with him to recycle in his worm bed. Later the claimant began working at the Okoboji, Iowa, location. He continued this practice. He thought management had seen him and did not object. At the end of his shift the claimant took the garbage out through the front door to the trash area. On September 7, 2015, a co-worker told the employer the claimant took home items from work. The employer looked at video from August 23, 2015, and saw the claimant taking bags of garbage out the front door to the trash.

The video also shows the claimant leaving work on his bike with a bag of garbage that holds inedible lettuce. The employer thought they saw pizza in the bag, too. On September 10, 2015, the employer terminated the claimant for taking pizza and lettuce from the store without paying for them. The claimant admitted taking inedible lettuce but he did not take pizza.

The claimant filed for unemployment insurance benefits with an effective date of October 4, 2015. The employer participated personally at the fact-finding interview on October 21, 2015, by Alisha.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 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.

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). 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). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. In this case, the claimant thought he could take the inedible lettuce home. It was not food or merchandise that could be paid for. He had received permission from a previous supervisor, albeit one from a different location. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's October 26, 2015, decision (reference 01) is affirmed. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs