

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MATTHEW AMADEO
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**CASEY'S MARKETING COMPANY
CASEYS GENERAL STORE
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**Appeal Number: 05A-UI-03058-SWT
OC: 02/13/05 R: 02
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 15, 2005, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 12, 2005. The parties were properly notified about the hearing. The claimant failed to participated in the hearing. Bill Brower participated in the hearing on behalf of the employer with a witness, Tom Chase.

FINDINGS OF FACT:

The claimant worked full time for the employer as a heavy-duty order filler from August 12, 2001, to February 2, 2005. Tom Chase and Chris Muhlbauer were the claimant's supervisors. The claimant received a written warning for excessive absenteeism on November 8, 2004, after he was late for work on October 28 and 31 and called in sick on November 7, 2004. On

December 21, 2004, the claimant was late for work due to winter weather conditions. He was absent for that reason on January 6, 2005, and called in sick on January 24, 2005.

On January 20, 2005, the claimant asked Muhlbauer if he could leave work at the lunch break on January 27 because his son was having team pictures taken for his basketball team. Muhlbauer approved the time off but understood that the claimant was coming back after an hour. The claimant left work in January 27 during his lunch break but never returned to work that day. The claimant worked on January 30, February 1 and February 2, 2005. He was absent from work due to having a sick child on February 3, 2005, and properly reported his absence. He reported to work as scheduled on his next day of work on February 7, 2005, and was questioned by Muhlbauer and the center manager, Bill Brower. The claimant explained that he misunderstood the approval given by Muhlbauer and believed he had been given permission to be off work for the rest of his shift on January 27. The claimant was discharged on February 7, 2005, for missing work without permission on January 27.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The claimant was given permission to leave work on January 27, 2005, and believed that he had the rest of his shift off work.

DECISION:

The unemployment insurance decision dated March 15, 2005, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs