

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NEAL P WINGFIELD

Claimant

CASEY'S MARKETING COMPANY

¢/o TALX UC EX

Employer

APPEAL NO. 16A-UI-06235-TN

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/08/16

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated May 27, 2016, reference 01, which denied unemployment insurance benefits finding that he was discharged from work on February 23, 2016 for violation of known company rule. After due notice was provided, a hearing was held in Ottumwa, Iowa on July 19, 2016. Claimant participated. The employer participated by Ms. Dee Daugherty, Store Manager. Employer's Exhibits A, B, and C and Claimant's Exhibits One, Two and Three were admitted into the hearing record.

ISSUE:

The issue is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Neal Wingfield was employed by Casey's Marketing Company from November 5, 2012 until February 23, 2016 when he was discharged from employment. Mr. Wingfield last worked as a part-time pizza delivery driver and was paid \$10.00 per hour plus a \$2.00 per delivery stipend and also received gratuities from customers. The claimant's supervisor was Ms. Dee Daugherty, Store Manager.

Mr. Wingfield was discharged on February 23, 2016 based upon the employer's belief that Mr. Wingfield had become unreasonably angry and directed inappropriate language towards an employee of another Casey's store who was temporarily working at Mr. Wingfield's work location on February 20, 2016.

On February 20, 2016, the claimant reported to work and found that a worker from another store who was temporarily assigned to the facility where Mr. Wingfield worked had improperly handled orders for pizzas that were to be delivered, potentially causing the claimant to lose the \$2.00 per pizza stipend that was paid by the company for each pizza that he delivered.

After finding an additional number of errors that the worker had made, Mr. Wingfield addressed the other worker about the errors and attempted to give her instructions on the proper way to handle delivery orders. After addressing the issue with the other employee, Mr. Wingfield immediately attempted to call the store manager to inform her of what had occurred and what actions he had taken. Ms. Daugherty did not answer the telephone but received the voice message and referred the issue to an assistant manager who telephoned Mr. Wingfield. The claimant explained to the assistant manager what had occurred and the reasons for it.

Later, the store manager of the Casey's location where the other worker normally worked, called Ms. Daugherty and said that the incident with Mr. Wingfield had "upset," the female worker.

The following Monday when Ms. Daugherty returned to work, she questioned the female worker about the incident. At that time, "Stacy," the other worker alleged that Mr. Wingfield had blown up, was in her face, and that his actions made her feel threatened. Ms. Daugherty took statements from other employees but did not take a statement from the claimant. One employee confirmed that the claimant appeared angry and was aggressive. A second employee stated that he had heard the claimant arguing with someone. In her statement, Stacy, the other worker, alleged that the claimant had used the word "Shit" while telling her that she needed to void out her transactions so that the claimant could get his delivery stipend. She also stated that the claimant had been rude when he had complained that he was going to lose his delivery fee.

Because the claimant had otherwise been a good employee and delivery driver and there had been no other significant issues with his employment, Ms. Daugherty sought the assistance of her area manager in deciding whether to discharge the claimant. After conferring, a decision was made to terminate Mr. Wingfield from his employment. The employer concluded that claimant's conduct was "harassment" because the other party felt "threatened" and Mr. Wingfield had been the aggressor. Casey's Marketing Company has a zero tolerance for harassment policy. Prior to discharging the claimant, the store manager had not heard or considered the claimant's explanation for what had occurred during the incident. The employer concluded that because it had been alleged that Mr. Wingfield had used a derogatory term, and because the claimant had referred to his potential monetary loss because of the other worker's mistakes, that his conduct towards the other employee was harassing and violated policy.

After being discharged from employment, Mr. Wingfield attempted to go up the company's chain of command to have the matter reconsidered, however, the employer did not meet with the claimant or allow him to return to work. Mr. Wingfield denies being warned or counseled by the employer for any reason prior to the incident in question.

It is the claimant's belief that the female worker had exaggerated the incident for the purposes of enhancing the employment of her son who was employed at the same location as a part-time pizza delivery driver with less seniority than the claimant. Claimant denies that he became unreasonably upset, or that he directed inappropriate language towards the female worker. His intention was only to instruct the female worker on the proper procedures so that he would not lose his \$2.00 per delivery stipend in the future.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in establishing intentional, disqualifying misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. They have not.

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).

In discharge cases the employer has the burden of proof to establish disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

The propriety of a discharge is not an issue in unemployment insurance matters. The employer may be justified in discharging the employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation.

Allegations of misconduct 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 Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

While hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony, providing that the sworn, direct testimony is credible and not inherently improbable.

In the case at hand, Mr. Wingfield appeared personally and provided firsthand sworn testimony denying that he used inappropriate language or that he became unreasonably upset or harassing towards a temporary employee during the incident in question. Mr. Wingfield testified that after noting a number of errors on delivery orders that the temporary employee had made, he did instruct her on the proper procedures for delivery orders so that he would not lose a \$2.00 per delivery stipend. After instructing the temporary employee, Mr. Wingfield immediately attempted to place a telephone call to the store manager to explain what had occurred. Unfortunately, the investigation about the matter was delayed and no statement was taken from the claimant.

A decision on whether to discharge Mr. Wingfield was then referred to an area manager who relied only on the allegations made by others without the benefit of Mr. Wingfield's side of the matter being considered.

Prior to the allegation, Mr. Wingfield had been considered to be a good employee and good delivery driver for the company and not received any significant warnings about his work. The administrative law judge finds the claimant to be credible and finds that his testimony is not inherently improbable. The administrative law judge concludes that the weight of evidence is established in favor of the claimant. The claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible to receive unemployment insurance benefits, provided that he meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated May 27, 2016, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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