

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND BUXENSTEIN
Claimant

APPEAL NO. 08A-UI-01536-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

**OC: 01-13-08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 6, 2008, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 27, 2008. The claimant participated in the hearing. Char Miller, Area Supervisor and Kimberly Birnbauner, Former Manager/Donut Maker, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time donut maker for Casey's Marketing Company from May 26, 2005 to September 27, 2007. On August 29, 2006, the claimant left a \$2,000.00 cash envelope out and it was stolen. On June 10, 2007, the claimant left a deposit on the desk all weekend rather than placing it in the safe. He was an assistant manager at that time and was demoted to donut maker. On August 11, 2007, the employer's store was robbed after it was closed. The thief unlocked the door, disarmed the alarm, used the combination to enter the safe, stole the money, closed the safe, reset the alarm and left the store. The thief was wearing a black, hooded sweatshirt and mask but both the area manager and the manager at the time believed it was the claimant on the videotape because of his build and the way he walked. On August 12, 2007, when the employer discovered the money missing it called the police. The police told the employer it believed the claimant was the thief but the case is still open. The police questioned and released the claimant August 17, 2007, after executing a search warrant on his home and car and not finding anything. The claimant was told not to return to the store or any other Casey's and the employer believes he was served with a no-contact order but the claimant denies receiving one or that he was involved in the theft.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. 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 administrative law judge did not find the claimant's testimony particularly credible, the local police have not been able to make a case against him for theft and he has not been charged to date. Although the claimant may be responsible for the theft, the employer cannot provide enough evidence to establish that he robbed the store and therefore the administrative law judge must allow benefits.

DECISION:

The February 6, 2008, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css