

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEVIN M STAHL
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 19A-UI-02349-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/17/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the March 8, 2019, (reference 01) representative decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 3, 2019. Claimant did not participate. Employer participated through Rose Rocha, Area Supervisor. Employer's Exhibit 1 was admitted into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct sufficient to disqualify him from receipt of unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a food service worker in the kitchen beginning on May 21, 2014 through February 18, 2019, when he was discharged. Claimant was promoted to food service leader about a year after he was initially hired. When he was hired the claimant honestly disclosed his criminal background on his job application. When claimant was promoted to food service leader the employer ran a background check on him. Claimant passed the background check and received his promotion. Part of claimant's job duties as the food service leader (kitchen manager) required he occasionally deliver pizzas.

The employer ran a new background check on the claimant as they wanted to include the job title of "pizza delivery" in his paperwork along with his job title "food service leader." The employer does not have any policy requiring that employees report any off duty criminal charges or conduct to the employer. A review of the background check in Employer's Exhibit 1 makes clear that all of the conduct listed in there predated claimant's ever being hired by Casey's. The employer has not established why the claimant passed a background check in 2015 that would have provided the exact same information as the background check done in late 2018 early 2019. All of the criminal information in the background check had been previously disclosed by claimant to the employer. The employer had access to that information for years as they contend they ran a background check on him when he was promoted in 2015. No explanation

other than a software program change was provided as to why claimant's background check is now considered unacceptable for continued employment.

REASONING AND CONCLUSIONS OF LAW:

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

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 claimant disclosed his criminal background when he was hired five years ago. The claimant was honest when he filled out his job application. The employer had a background check done on the claimant when he was promoted four years ago. Claimant's current background check contains no new information that would not have been part of his prior background check. No new events are reported in the current background check that occurred after the claimant was promoted in 2015.

The employer may have changed their policy about what is an acceptable 'background' check, but their change in policy does not mean the claimant committed job connected misconduct.

871 IAC 24.32(8) provides: Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past act or acts. The termination of employment must be based upon a current act. A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Employer has not established a current or final act of misconduct. Accordingly, benefits are allowed.

DECISION:

The March 8, 2019, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs