

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E COLEMAN
Claimant

APPEAL NO. 15A-UI-12814-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 10/18/15
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 November 9, 2015, decision (reference 01) that concluded Michael Coleman (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 participated personally. The employer participated by Katie Cummings, Manager; Krystle McClain, Store Manager. The employer offered and Exhibit 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 September 10, 2015, as a part-time store employee. On September 11, 2015, the employer had the claimant complete and sign a Career Application. When the claimant filled out the Career Application, he answered "no" to the question as to whether he had ever been convicted of a crime other than a routine traffic violation. He certified that all answers were true and complete to the best of his knowledge by his signature.

On October 16, 2015, the employer terminated the claimant because it received a background check with convictions in 2006 and 2009. The claimant wrote a bad check in 2006, paid the store before the due date, and thought the matter was removed from his record. The claimant did not know about conviction in 2009.

The claimant filed for unemployment insurance benefits with an effective date of October 18, 2015. The employer participated personally at the fact-finding interview on November 6, 2015, by Stefanie Rawles.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits, provided he 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).

Iowa Admin. Code r. 871-24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer must prove that the Career Application was an application for hire and the falsification could cause harm to the claimant, the

employer or others. First of all, the claimant had been hired prior to completing the Career Application. The Career Application could not have been an application for hire. The claimant In addition, the employer indicated that the claimant's false statement would not endanger the health, safety or morals of the claimant or others. It would not expose the employer to liabilities, penalties or jeopardy. The employer has failed to prove the claimant was discharged for misconduct. Benefits are allowed.

DECISION:

The representative's November 9, 2015, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs