

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

OPUBO T IDOIBOYE
Claimant

APPEAL NO. 07A-UI-05997-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 05/20/07 R: 03
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Opubo Idoiboye filed an appeal from a representative's decision dated June 4, 2007, reference 01, which denied benefits based on his separation from The University of Iowa (UI). After due notice was issued, a hearing was held by telephone on July 2, 2007. Mr. Idoiboye participated personally. The employer participated by Dave Bergeon, Human Resources Specialist; Ellen Hergert, Associate Director, Food and Nutrition Services; and Jennifer Woolston, Retail Manager, Food and Nutrition Services.

ISSUE:

At issue in this matter is whether Mr. Idoiboye was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Idoiboye was employed by UI from November 27, 2000 until May 17, 2007. He worked approximately 20 hours each week as a food service worker. Some of his coworkers reported to the supervisor that they suspected Mr. Idoiboye of removing items from work. They reported that his book bag appeared empty when he arrived at work and full when he left. As a result of the reports, the employer decided to inspect his book bag as he was leaving work.

On May 16, the associate director of Food and Nutrition Services requested that Mr. Idoiboye allow an inspection of his book bag. He declined. He was told security would be called if he did not allow the inspection. He continued in his refusal and, therefore, security was notified. Mr. Idoiboye refused to allow security to inspect his book bag. Therefore, campus security was contacted and the matter was turned over to them. The employer had no information as to what transpired from that point.

As a result of his refusal to allow an inspection of his book bag, Mr. Idoiboye was suspended from work pending an investigation. He was notified of his discharge on May 21, 2007. His refusal was considered a violation of the employer's work rules. It is a violation to fail to submit

to an inspection by a supervisor or security officer of personal packages taken from the work area. The above matter was the sole reason for the separation.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Idoiboye was discharged for refusing to submit to an inspection of his book bag at the request of his supervisor and security. The failure or refusal to perform a task does not constitute misconduct if the failure or refusal is in good faith or for good cause. Woods v. Iowa Department of Job Service, 327 N.W.2d 768 (Iowa App 1982). Mr. Idoiboye asserts that the employer's warrantless search of his book bag violated his rights under the Fourth Amendment to the United States Constitution. He asserts that his refusal to surrender his legal rights cannot form the basis of a misconduct disqualification.

The Fourth Amendment protects individuals' right to be secure in their person and effects against unreasonable searches and seizures. Mr. Idoiboye had a reasonable expectation of privacy with respect to his book bag. The law would, therefore, protect him from an unreasonable search of the book bag. The issue thus becomes whether the search requested on May 16, 2007 was unreasonable. In determining reasonableness, there must be a balancing of the nature and quality of the intrusion on the individual's rights against the importance of the governmental interests alleged to justify the intrusion. United States v. Place, 462 U.S. 696, 703 (1983). The probable cause requirement for a search is not practical as public employers should be given wide latitude to conduct searches in investigating employee misconduct. O'Connor v. Ortega, 480 U.S. 709 (1989). Under the reasonableness standard applicable to a public employer's search, the search must be reasonable in its inception and in scope. New Jersey v. T.L.O., 469 U.S. 325, 341 (1985).

A search is reasonable at its inception if there are reasonable grounds to believe it will produce evidence of an employee's work-related misconduct. Ibid. In the case at hand, the employer was acting on reports from coworkers who indicated that Mr. Idoiboye's book bag appeared empty when he arrived at work but full when he left. Given these reports, it was reasonable for the employer to suspect that he was pilfering food products. Therefore, the administrative law judge concludes that the proposed search was reasonable at its inception. A search is permissible in its scope where the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the suspected misconduct. 469 U.S., at 342. Asking Mr. Idoiboye to open his book bag was reasonably related to the objective of determining whether he had engaged in misconduct by taking food without authorization. The intended search was not excessively intrusive in light of the fact that the book bag could have contained evidence of misconduct.

The administrative law judge concludes that the intended search of Mr. Idoiboye's book bag was not unreasonable and, therefore, did not impinge on his Fourth Amendment rights. The issue then becomes whether his refusal to allow a reasonable search of his book bag constituted disqualifying misconduct. The employer's request to search the book bag was a reasonable request from a supervisor. Mr. Idoiboye knew or should have known that the search was intended to determine if he had taken items from work without authorization. His refusal to cooperate constituted insubordination. He has failed to establish that his refusal was in good faith or for good cause. He was subject to the employer's work rules that require employees to submit to inspection of packages taken from the work area.

The administrative law judge concludes that Mr. Idoiboye's refusal to allow his book bag to be inspected as instructed constituted disqualifying misconduct. Accordingly, benefits are denied.

DECISION:

The representative's decision dated June 4, 2007, reference 01, is hereby affirmed. Mr. Idoiboye was discharged by UI for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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