

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEREMY J MORRIS

Claimant

APPEAL 21A-UI-07734-ML-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 01/24/21

Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 9, 2021, (reference 01) unemployment insurance decision that determined claimant was not eligible to receive unemployment insurance benefits. The IWD representative's decision determined claimant was discharged from work for failure to follow instructions in the performance of his job. The parties were properly notified of the hearing. A telephone hearing was held on May 5, 2021. The claimant, Jeremy Morris, participated personally. The employer, Casey's Marketing Company, participated through Manager Diana Munford and co-worker Sherry Estes.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a Store Employee. As a store employee, claimant worked in the kitchen as a cook. He began working for the employer on January 10, 2019, and he last physically worked on January 10, 2021. Claimant was discharged by Ms. Munford on January 11, 2021. His immediate supervisor was Lina Pulse. Ms. Pulse is a Kitchen Manager.

Employer has a zero tolerance policy against the misappropriating of product. The employer's policies require employees to pay for food before it is consumed. The employee handbook provides that employees can receive discounts on certain food items; however, the only food or drink items that are free to employees are fountain drinks. Claimant was aware of the employer's food and beverage policy.

At some point in January, 2021, claimant's co-workers told Ms. Munford that they did not believe claimant was paying for food he was consuming while on the clock. As part of her investigation into the matter, Ms. Munford reviewed surveillance footage from the store. In doing so,

Ms. Munford witnessed two incidents that appeared to support the tip she received from claimant's co-workers.

The first incident that lead to discharge occurred on January 3, 2021. On that date, claimant consumed breadsticks without paying for them. Ms. Munford became aware of this incident while reviewing surveillance camera footage of the Casey's store. Ms. Munford did not find a receipt for the breadsticks when she reviewed the employee discount log.

The second incident that lead to claimant's discharge occurred on January 10, 2021. On this date, claimant was working with Ms. Estes and another co-worker. During his shift, claimant made and consumed a large pizza without paying for the same. He offered to share his pizza with Ms. Estes and the other co-worker. Ms. Estes assumed the pizza had been paid for and agreed to have some of Mr. Morris' pizza. Ms. Estes was not terminated for consuming claimant's pizza; however, she was reprimanded for the same.

On January 11, 2021, claimant was called into the store and terminated by Ms. Munford. Given the employer's zero tolerance policy, the first incident that occurred on January 3, 2021, was provided as the official reason for claimant's discharge.

The surveillance videos were not provided for claimant to review, nor were they offered as evidence at hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the March 9, 2021 (reference 01) unemployment insurance decision that denied benefits based on a finding claimant was discharged from work on January 11, 2021, for misconduct is AFFIRMED.

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 employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

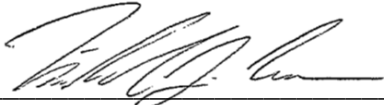
Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

In this matter, the evidence establishes that claimant was discharged for an act of misconduct when he violated the employer's policy concerning misappropriation of products. The incidents which brought about the discharge constitute misconduct because claimant knew of the policy and twice chose to disregard said policy.

Claimant did not follow the proper procedure for purchasing a full pizza or an order of breadsticks. The two incidents observed occurred in relatively quick succession. It is difficult to chalk back-to-back incidents up to a good faith error in judgment. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The March 9, 2021, (reference 01) unemployment insurance decision is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Michael J. Lunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

June 7, 2021
Decision Dated and Mailed

mjl/scn