

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER HOUSER
Claimant

APPEAL NO: 15A-UI-00726-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 12/21/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 8, 2015, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 9, 2015. The claimant participated in the hearing. Jessica Moore, Manager, 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 part-time cashier for Casey's from May 16, 2013 to December 26, 2014. He was discharged for eating food from the employer without paying for it.

The employer's policy requires that employees pay for food before consuming it at a 50 percent discount. The claimant was aware of the policy as he was told about the food policy at the time of hire. The employer learned two other employees were taking food and eating it without paying for it and one of them told the employer at the time of his termination December 19, 2014, the claimant was also taking food without paying for it. That statement prompted the employer to review the video of the claimant's recent shifts.

On December 10, 2014, the video showed the claimant eating chicken tenders by register one and about 20 minutes later something out of one of the employer's cups that customers use to hold popcorn chicken, potato cheese bites or pizza rolls. He did not pay for any food from the employer December 10, 2014. On December 16, 2014, around 6:00 p.m. he paid for, ordered and ate chicken tenders. After the kitchen personnel he purchased the chicken tenders from completed her shift and another kitchen employee came in, the claimant was observed next to register one eating a breaded pork or chicken sandwich without paying for it. After reviewing

the video December 20 through December 24, 2014, the employer met with the claimant December 26, 2014, and notified him that his employment was terminated for theft in violation of the employer's policy that states any merchandise purchased by an employee must be paid for before consumption, use or removal from the store.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

While the claimant denies eating food he did not purchase from the employer, the employer's testimony was more persuasive. The claimant stated on December 10, 2014, he was eating beef stew prepared by his father and agreed he used one of the employer's cups. He said he was using a spoon but the video showed him eating finger food out of the cups that are used for popcorn chicken, potato cheese bites or pizza rolls and he was not using a spoon. He was also observed eating chicken tenders without paying for them. There are no records of the claimant purchasing any food from the employer December 10, 2014.

On December 16, 2014, the employer noted the claimant was eating a breaded pork or chicken sandwich without having paid for it. The claimant stated his father made him a sandwich and wrapped it in foil and he threw that foil away and went and got the foil the breaded pork and chicken sandwiches from the employer are wrapped in to set his sandwich on. Again, the employer's testimony was more persuasive than that of the claimant.

The claimant consumed food from the employer without paying for it on at least two separate occasions, December 10 and December 16, 2014. That is considered theft. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The January 8, 2015, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs