

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARILYN MASSEY**  
Claimant

**APPEAL NO. 10A-UI-05875-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SECURITAS SECURITY SERVICES  
USA INC**  
Employer

**OC: 03/14/10  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated April 7, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was held on June 9, 2010. The claimant participated personally. The employer participated by Mr. Tom Kuiper, Hearing Representative and witnesses Randy Kilbourn, Site Supervisor and Ms. Karen Cox, Human Resource Manager.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge having considered all of the evidence in the record, finds: Marilyn Massey was employed as a part-time security guard for this employer from December 19, 2006 until March 12, 2010 when she was discharged for misappropriating approximately two pieces of pizza that belonged to a Securitas Securities Services client.

Ms. Massey was assigned to work at the Oral B facility on weekends. On Friday, February 19, Ms. Massey misappropriated approximately two slices of pizza that was being delivered to the facility for Oral B employees. Prior to forwarding the boxes of pizza that had been delivered to the security desk, Ms. Massey opened two boxes and took two pieces of her choice. Subsequently Oral B employees were angered when they determined that some of the pizza that had been ordered for them had been misappropriated by a member of the Securitas Security Services.

Although Securitas Security Services became aware of the client complaints regarding the misappropriation of the pizza within a short time, the claimant's discharge was delayed until approximately one month later on March 12, 2010.

Employees of Oral B had on a number of occasions provided food or treats to Ms. Massey without charge in the past. The claimant thus believed that removing two pieces of pizza would not be significant or a cause of complaint.

**REASONING AND CONCLUSIONS OF LAW:**

The employer has the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant a discharge of an employee is not necessarily serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). While past acts and warnings can be used to determine the magnitude of a current act of misconduct, the discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Iowa Code section 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.

871 IAC 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.

871 IAC 24.32(8) provides:

(8) 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 on such past act or acts. The termination of employment must be based on a current act.

The evidence in the record establishes that Ms. Massey misappropriated two slices of pizza from the delivery order in question without approval or authorization to do so. The claimant had however in the past often been offered food or treats by Oral B employees and did not consider her act to be significant for those reasons. The administrative law judge also notes that although the act took place on February 19, 2010 the claimant was not discharged until March 12, 2010 and was allowed to continue working and performing services on weekends as usual until she was discharged from employment. The administrative law judge concludes that the claimant thus was not discharged for a current act of misconduct.

While the decision to terminate Ms. Massey was undoubtedly a sound decision based upon the reaction of the company's client, the claimant's conduct when viewed objectively was in the nature of an isolated instance of poor judgment but did rise to the level to disqualify the claimant from the receipt of unemployment insurance benefits. Benefits are therefore allowed providing the claimant meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated April 7, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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