

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

BRENDA L SNOW

Claimant,

and

CASEY'S MARKETING CO

Employer.

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HEARING NUMBER: 15B-UI-11776

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

Brenda Snow (Claimant) worked for Casey's Marketing (Employer) as a full-time donut maker from October 28, 2004 until she was fired on October 24, 2014.

The Employer's policy required employees to pay for all food consumed or removed from the store. The Employer went over this policy at regular meetings. In May 2014 the Employer told the Claimant she could not out take out boxes of day old donuts without paying for them. The Employer purchased reusable mugs and instructed its employees that they could get coffee for free only if they used the reusable mugs. The Claimant continued to get coffee for free without using the reusable mugs, and continued to eat day old donuts many mornings before her co-workers arrived.

As a result of an unrelated customer complaint, the manager reviewed the store's video in October 2014. While investigating the complaint, Welch observed the Claimant eating day old donuts the mornings of October 20, 21, and 23 before anyone else reported to work. The Claimant did not pay for the donuts or the ice coffee she drank these days. She did not use the store issued reusable employee mug as instructed. The Employer fired the Claimant when she knowingly violated the Employer's policy by consuming food, the donuts, without paying for them.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2014) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We have found credible the Employer evidence showing that the Claimant was aware of the policy on consumption of old donuts. We conclude that the Claimant deliberately violated the Employer's policies, and do not find credible her protestations that she was just confused. Given this the only question is whether this rises to the level of misconduct.

Theft from an employer is generally disqualifying misconduct. *Ringland Johnson Inc. v. Employment Appeal Board*, 585 N.W.2d 269 (Iowa 1998). In *Ringland* the Court found a single attempted theft to be misconduct as a matter of law. Even the theft of a item of negligible value a single time can be misconduct. Thus in *Thompkins-Kutcher v. EAB*, 11-0149 (Iowa App. 8/24/2011) a Casey's employee who took a wasted \$10 container of soup from dumpster was disqualified for misconduct. The Claimant here engaged in similar intentional infractions, but on a much more extended basis, and so we disqualify her for misconduct. As in *Thompkins-Kutcher* we do not base our decision on whether or not the donuts were to be trashed, rather we base our decision on the Claimant's knowing violation of the company's policy that all food items consumed, regardless of whether the item is outdated, must be paid for. The Claimant is accordingly disqualified for her eating of the donuts without paying for them in knowing violation of the Employer's policy.

DECISION:

The administrative law judge's decision dated December 12, 2014 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was discharged for disqualifying misconduct. Accordingly, she is denied benefits until such time the Claimant has worked in and has been paid wages for insured work equal to ten times the Claimant's weekly benefit amount, provided the Claimant is otherwise eligible. See, Iowa Code section 96.5(2)"a".

Kim D. Schmett

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