

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PETER M RIES**  
Claimant

**APPEAL NO. 09A-UI-15003-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**Original Claim: 09/13/09  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Fareway Stores, Inc. filed an appeal from a representative's decision dated September 30, 2009, reference 01, which held that no disqualification would be imposed regarding Peter Ries' separation from employment. After due notice was issued, a hearing was held by telephone on November 5, 2009. Mr. Ries participated personally. The employer participated by Paul Heffernen, Store Manager, and was represented by Garrett Tiklapp, General Counsel. Exhibits One through Five were admitted on the employer's behalf.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ries was employed by Fareway Stores, Inc. from July of 2005 until September 11, 2009. He was last employed full-time as a sales clerk and shift manager. He was discharged from the employment.

The employer met with Mr. Ries on August 8, 2009 concerning certain deficiencies in his performance. On one occasion, he had placed items back on the shelves after the customer left without taking the purchases. The customer returned approximately 15 minutes later and the items had to be retrieved from the shelves. Mr. Ries was working the truck at the time and replaced the items on the shelves at the request of others. He gave a list of the items to an assistant manager. Another issue discussed during the August 8 meeting was the fact that Mr. Ries needed to be working with the kids more. He was also reminded of the need to keep himself visible to everyone.

The employer met with Mr. Ries again on December 22, 2008. He had been exchanging text messages with several female employees. He obtained some of their numbers from work and some from their "Facebook" pages. There was also a complaint that he was frequently touching one employee's hair. There were no further complaints of texting or touching after the warning.

The warning also advised that Mr. Ries was spending too much time in the office when he was in charge. It was felt that his time in the office on Friday night prevented the store from being ready for the truck the following Saturday morning. Finally, the warning addressed his failure to take a full one hour for lunch on December 22.

Mr. Ries received a written warning on August 27, 2009 for what the employer felt was discourteous treatment of customers. There were two women shoppers together who had purchased two bags of groceries and two 12-packs of pop. The items were in the cart and Mr. Ries intended to take the cart out for them. However, they removed their items from the cart to carry them out themselves. Mr. Ries did not offer to carry the items and did not say "thank you" to the customers. The decision to discharge was based on a customer complaint received on September 8, 2009. The customer indicated that Mr. Ries acted "stuck up" and that he walked around with his "nose up in the air." The customer indicated that Mr. Ries did not speak and did not appear appreciative of the customer's business. Mr. Ries was notified of his discharge on September 11.

### **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). For reasons that follow, it is concluded that disqualifying misconduct has not been established. For the most part, Mr. Ries made changes in his performance or conduct once problems were brought to his attention.

There were no further complaints of him texting or touching others after the problem was addressed by management. The employer did not again discipline him for not spending enough time on the floor or for spending too much time in the office after these issues were identified as problem areas. His conduct in placing purchased items back on the shelves was an isolated instance and was at the direction of others. He did not habitually fail to take the required amount of time for breaks.

The employer presented evidence of two occasions on which it was felt Mr. Ries was discourteous to customers. Although it was his intention to take the groceries out for the two women on August 27, he acknowledged that he did not express that intention when they began removing items from the cart. He apparently did not want to offend them by suggesting they could not carry their own groceries. This was, at most, a good-faith error in judgment. The customer that complained on September 8 did not find Mr. Ries to be friendly. On the evidence presented, the administrative law judge cannot conclude that he was rude or discourteous. The fact that he did not meet the customer's expectations regarding friendliness does not, in and of itself, establish a disregard for the employer's interests or standards.

It was within the employer's prerogative to discharge Mr. Ries. However, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). There must be substantial misconduct to justify a disqualification from benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). For the reasons stated herein, benefits are allowed.

**DECISION:**

The representative's decision dated September 30, 2009, reference 01, is hereby affirmed. Mr. Ries was discharged, but misconduct has not been established. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw