

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH E JACKSON**  
Claimant

**APPEAL NO: 12A-UI-08538-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 06/17/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's July 9, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Jim Giardino, the area supervisor; Nick Lampe, the assistant meat manager; and Theresa McLaughlin, a human resource generalist, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in November 2004. He worked as a full-time meat cutter. The employer's policy states, in part, that no employee, including managers, can check out groceries for themselves or immediate family. An employee must have other employees check out merchandise. All market personnel must have someone else wait on them for meat purchases. The claimant knew about this policy and had someone else check out his meat purchases except on June 9. Prior to June 9, the claimant noticed other employees in the meat department check out meat purchases or groceries for themselves. The claimant did not know these co-workers later showed Lampe what they had checked out. The claimant did not know about anyone being disciplined for checking out their own meat or groceries.

On June 9 before Lampe left at the end of shift, he saw meat the claimant had sitting the cooler. Lampe told the claimant to make sure he took that meat home with him. Lampe did not offer to check out the meat for the claimant. Before Lampe left, he asked an employee to keep an eye out for the claimant to see if he bought any groceries that night. Lampe was suspicious of the claimant because he appeared to buy groceries on nights he closed and management was not at the store.

On June 9, the claimant checked for himself out a ten-pound bag of chicken hind quarters that he reduced from 89 cents a pound to 49 cents a pound. The claimant saw a coupon from another store for rib eye at \$6.49 a pound. The price at the employer's store on June 9 for the rib eye was \$6.99 a pound. The claimant checked out the rib eye for himself at \$6.49 a pound. At the end of the night, the claimant gave the meat ticket he had generated for the meat to the cashier and she charged him accordingly. The employee Lampe had talked to earlier informed Lampe about the claimant's June 9 purchases.

When Lampe talked to the claimant on June 12, the claimant admitted he checked meat for himself out on June 9. (Employer Exhibit One.) The employer discharged the claimant on June 12 for violating the employer's employee purchase/self-checkout policy. The employer discharges employees who do not follow this policy even if the employer has worked a number of years for the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the employer asserted all employees are discharged if they checkout their own groceries or meat, the claimant saw other employees do this and Lampe admitted he did not discipline any employee if they checked out their own grocery items as long as they showed him later what they had done. The evidence indicates June 9 was the first time the claimant checked out meat for himself. Since Lampe knew the claimant was going to take home the chicken and rib eye that night, he could have offered to check-out the meat for the claimant, but did not.

Since the claimant saw other employees violate the policy without any consequence, his failure to follow the policy on June 9 does not rise to the level of work-connected misconduct. As of June 17, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representative's July 9, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 17, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw