

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY T SHINE

Claimant

APPEAL NO. 11A-UI-14265-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/02/11

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated October 24, 2011, reference 02, which denied unemployment insurance benefits. After due notice was issued, a telephone hearing was held on November 30, 2011. The claimant participated personally. The employer participated by Ms. Christina Counter, store manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jeremy Shine was employed by Casey's Marketing Company as a part-time cook from February 16, 2011, until May 31, 2011, when he was discharged from employment. Mr. Shine was paid by the hour. His immediate supervisor was Christina Counter.

Mr. Shine was discharged from his employment after he failed to report for work on May 23, May 30, and May 31, 2011. At the time that the claimant had last reported for work, the schedule for the dates in question had not been posted. Mr. Shine had called in to verify the dates that he was next scheduled to work and was not told that he was scheduled to work on those days. The employer attempted to contact Mr. Shine via cell phone. However, Mr. Shine's cell phone was inoperable.

Although the employer was aware that Mr. Shine did not know that he was scheduled to work on the days in question, he was not reinstated, because he had been replaced with another employee. The employer also felt that other part-time employment held by Mr. Shine had previously been a hindrance to the company's scheduling the claimant when needed.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

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 benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The evidence in the record establishes that Mr. Shine was discharged after he did not report for expected work on three work shifts. The evidence in the record also established, however, that the schedule for the claimant's work week had not been posted in advance and that Mr. Shine was unaware that he was scheduled to work on those dates. The claimant had called in and had been informed that he was not scheduled.

While the employer's decision to terminate Mr. Shine may have been a sound decision from a management viewpoint, intentional disqualifying misconduct on the part of the claimant has not

been shown. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated October 24, 2011, reference 02, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw