

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES R MADDOX

Claimant

APPEAL NO. 17A-UI-04777-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/26/17

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's April 25, 2017, decision (reference 01) that concluded Charles Maddox (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 23, 2017. The claimant participated personally. The employer participated by Luke Weaver, Store Manager; Dalton Cale, Food Service Leader; Diana Fossum, Area Supervisor; and Alisha Weber, Unemployment Insurance Consultant. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 10, 2015, as a part-time delivery driver. The claimant signed for receipt of the employer's handbook on March 10, 2015. On February 21, 2017, the employer issued the claimant a written warning for writing inappropriate comments on signage at work. The employer notified the claimant that further infractions could result in termination from employment. The employer talked to the claimant about purchasing the wrong uniform pants, being argumentative, and having his dog in his truck but did not indicate any consequences for noncompliance.

On March 22, 2017, a co-worker told the claimant he wanted to quit. The claimant encouraged him to keep working. Two co-workers were joking around each other's mother. When they said something to the claimant about his mother, the claimant said he would appreciate it if they would not say anything. The claimant had recently lost his last family member. The claimant complained about deliveries and was argumentative but his behavior was no different than his past behavior.

On March 23, 2017, one co-worker said the claimant threatened to “knock him on his ass”. Another employee said the claimant stated, “Shut the fuck up.” The claimant denied making either statement. The employer terminated the claimant on March 23, 2017 for displaying inappropriate behavior and acting unprofessionally.

The claimant filed for unemployment insurance benefits with an effective date of March 26, 2017. The employer participated personally at the fact finding interview on April 24, 2017, by Alisha Weber.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct. Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*,

351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct.

An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. The first-hand testimony from the claimant is stronger than the employer's witness statements. The statements do not carry as much weight as live testimony because the testimony is under oath and the witness can be questioned. The employer could not provide first-hand testimony at the hearing and, therefore, could not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's April 25, 2017, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn