

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TODD J TREAT**  
Claimant

**APPEAL NO. 09A-UI-07641-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**Original Claim: 04/19/09  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Todd J. Treat filed a timely appeal from an unemployment insurance decision dated May 14, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held June 11, 2009, with Mr. Treat participating and being represented by Mark Lawson, attorney at law. Garrett Piklapp, attorney at law, corporate counsel for Fareway Stores, Inc., appeared on behalf of the employer. Human Resources Vice President Mike Mazour testified.

**ISSUE:**

Was the claimant's separation from employment a disqualifying event?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Todd J. Treat began working for Fareway Stores, Inc. as a high school student in May of 1977. By April of 2009, he had served as the assistant manager at the Fareway Store in Maquoketa, Iowa, since 1997. On or about April 14, 2009, Human Resources Vice President Mike Mazour advised Mr. Treat of an involuntary transfer to either the company's store in Bettendorf or in Davenport, Iowa. Mr. Mazour told Mr. Treat that his employment would end if declined both transfers. Mr. Treat declined the transfers because of the distance of commuting to the Quad Cities from his home in Andrew, the difficulty in selling his home in Andrew if he chose to move, and the difficulty of his wife's commute to her employment in Maquoketa should the couple move. Mr. Treat told Mr. Mazour on April 21, 2009, that he declined both transfers. His employment then ended. No further offers of employment have been made to Mr. Treat since that date.

While at Maquoketa, Mr. Treat declined company initiatives that he transfer on three separate occasions.

## REASONING AND CONCLUSIONS OF LAW:

The question is whether the separation from employment was a disqualifying event. It was not.

The employer views the separation as a voluntary quit. The claimant, on the other hand, views it as a discharge. The administrative law judge concludes from the evidence that the employer discharged Mr. Treat because of his refusal to accept transfer to either Bettendorf or Davenport. The question is whether that refusal constituted misconduct.

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 evidence establishes that when Mr. Treat became a manager within the Fareway system, he received a document advising him that he would be working in a number of different stores over the course of his employment. On the other hand, the evidence also establishes that the employer allowed Mr. Treat to decline transfers on three occasions while he worked in Maquoketa. The evidence does not indicate that the notice Mr. Treat received specified that his employment would end if ever he declined a transfer. Even if it did, the company had not forced the issue in the past.

From this evidence, the administrative law judge concludes that it was not misconduct for Mr. Treat to decline transfer to either the Bettendorf store or to the Davenport store. No disqualification may be imposed.

The hearing notice also lists the law section for refusal of a suitable offer of work. The evidence in the record, however, establishes that no offer of work has been made by Fareway Stores, Inc., to Mr. Treat since his separation from employment.

**DECISION:**

The unemployment insurance decision dated May 14, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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