

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN STEVENS

Claimant

APPEAL NO: 11A-UI-13840-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/18/11

Claimant: Respondent (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated October 11, 2011, reference 01, which held that Jordan Stevens (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 17, 2011. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted and, therefore, did not participate. The employer participated through Patricia Hodgson, manager. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier from July 12, 2010 through September 23, 2011. He was discharged for removal of company property without paying for it. On September 17, 2011, the claimant had a \$65.00 gas drive off and his drawer was short \$100.00. The manager reviewed the surveillance video tape for the day and saw that the claimant ate a sandwich without paying for it. The manager reviewed other tapes and saw that the claimant took a sandwich with him when he left work on September 11, 2011 and failed to pay for it.

The claimant filed a claim for unemployment insurance benefits effective September 18, 2011 but has not received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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 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 claimant was discharged on September 23, 2011 for two incidents of theft as recorded on surveillance tape. He signed for the employer's policy regarding removal of company property, which clearly states that an employee is subject to immediate termination for failing to properly pay for the employer's food products before consumption. The claimant's theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated October 11, 2011, reference 01, is reversed. The claimant is not eligible to receive unemployment insurance benefits, because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. There is no overpayment as a result of this decision.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw