

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY C MEIER

Claimant

APPEAL NO. 11A-UI-00621-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/12/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated January 5, 2011, reference 01, that held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 22, 2011. The claimant participated personally. The employer participated by Ms. Kim Ramackers, Supervisor.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Bradley Meier was employed by Casey's Marketing Company from January 7, 2010 until December 13, 2010 when he was discharged from employment. Mr. Meier held the position of full-time assistant manager and was paid by the hour. His immediate supervisor was Kim Ramackers.

Mr. Meier was discharged after the facility manager stated that she found no "pizza slips" in the company's cash drawer on December 9, 2010. The manager, Ms. Harrison, had stated to Ms. Ramackers that Ms. Harrison had taken the pizza order herself that day and therefore pizza purchase slips and the remuneration for the purchase of the pizza should have been included in the cash drawer that night when Mr. Meier was working as a cashier.

Ms. Ramackers reviewed security tapes and observed Mr. Meier and the pizza customer engaging in the transaction. Ms. Ramackers observed the transaction observing money changing hands and Mr. Meier ringing in a coffee refill and then voiding the transaction. The claimant was also observed punching a pizza ticket. Because there were no pizza tickets in the cash drawer and the cash remuneration did not show a pizza transaction had taken place, Ms. Ramackers concluded that Mr. Meier had misappropriated the funds. When questioned about the matter at the time of termination a few days later, Mr. Meier did not recall the transaction and offered no explanation.

Mr. Meier denies misappropriating any company funds. After becoming more fully aware of the transaction in question, Mr. Meier recalls that the cash register was being manned by Ms. Harrison for a period of time on the day in question because Mr. Meier was changing gas prices on an outdoor sign. Mr. Meier contacted both the customer and Ms. Harrison and concluded based upon their statements that confusion had occurred because the customer had paid Ms. Harrison for the transaction. It is the claimant's belief that the customer sent an email to the employer after Mr. Meier's termination explaining the circumstances.

It is the claimant's position that during the transaction in question he was told by the customer that the customer had already paid Ms. Harrison for the pizza and that Mr. Meier had voided a coffee refill transaction at the time because he had mistakenly entered the transaction.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is 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. The issue is not whether the employer made a correct decision by separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what

misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

In this case the claimant participated personally and provided first-hand sworn testimony. In contrast the evidence in support of the employer is essentially hearsay in nature. Although hearsay is admissible in administrative proceedings it cannot be accorded the same weight as sworn direct testimony. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable.

Mr. Meier testified that he did not initially contest the decision to terminate him as he was unaware of the exact transaction and that upon recollection the claimant questioned both the store manager and the customer who purchased the pizzas. Mr. Meier testified that the manager recalled that she had collected for the pizza herself earlier that day. The claimant further testified that the customer had sent an email to the company headquarters explaining that the pizza had been paid for prior to the transaction with Mr. Meier. The employer's witness and her testimony agree that an email was received by the company but is unsure of its contents. Ms. Harrison, the store manager, was not brought forward as a witness as she also had been discharged from employment.

The administrative law judge concludes based upon the totality of the hearing record that Mr. Meier has supplied a reasonable explanation for his conduct and the observations made on the video camera and testified to by Ms. Ramackers. The administrative law judge notes that there had been no previous allegations or warnings issued to Mr. Meier about dishonesty or failing to follow established store policies. The decision to terminate the claimant was based solely on statements made to Ms. Ramackers by the store manager and the conclusion reached by Ms. Ramackers by viewing a video surveillance tape. As the claimant has provided a reasonable explanation for his conduct, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated January 5, 2011, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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