

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SAMUEL D ROUTH
Claimant

APPEAL NO: 18A-UI-07801-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 06/10/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 10, 2018, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 10, 2018. The claimant participated in the hearing. Billy Fryer, Area Supervisor and Zontel McCann, Lead Unemployment Insurance Consultant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time kitchen employee for Casey's from March 28, 2017 to June 11, 2018. He was discharged for allegedly violating the employer's code of conduct policy.

On September 29, 2017, the claimant received a written warning for failing to meet the employer's standards by not fulfilling his job duties. The claimant signed the warning. On November 28, 2017, the claimant received a written warning after he was overheard making disrespectful remarks about co-workers. The employer reviewed the harassment policy and the claimant signed the written warning. On December 21, 2017, the claimant received a written warning for failing to follow the schedule after he clocked out and left the store and returned without management approval. The claimant signed the warning. On February 12, 2018, the claimant received a written warning for excessive tardiness because he violated the employer's six minute before and after scheduled start time rule. The claimant signed the warning. On February 28, 2018, the claimant received a written warning for excessive tardiness after he clocked in late February 25, 26 and 27, 2018, and had a confrontation with his girlfriend in the store in front of customer and co-workers.

On June 11, 2018, the claimant reported for work with a hickey on his neck and began discussing it with a cashier at the register in front of a customer. The customer complained and the employer terminated the claimant's employment for violating the employee conduct policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant's testimony about his discussion of his hickey at work was not particularly credible, the employer did not provide a first-hand witness to the events of June 11, 2018, and the claimant denies the employer's testimony. The claimant's denial of most of the written warnings that the employer testified he signed makes his testimony even less persuasive but

because he was the only party present June 11, 2018, his testimony must carry more weight than the employer's second hand testimony.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The July 10, 2018, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn