

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN W BAKER
Claimant

APPEAL NO: 15R-UI-01156-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 10/26/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 24, 2014 (reference 01) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for non-disqualifying reasons. The claimant did not respond to the hearing notice and did not participate at the December 22, 2014 hearing. Alisha Weber with TALX/Equifax participated at the hearing. The employer's primary witnesses were not available for the December 22 hearing. Based primarily on the administrative record, the administrative law issued a decision that affirmed the claimant was qualified to receive benefits.

The employer appealed the administrative law judge's decision, Appeal No. 14A-UI-12414. Another hearing was scheduled on February 23, 2015. The claimant participated at this hearing. Kelly Rohrbouch, an employee with Equifax, and Jean Yamagata, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in May 2014. He worked 20 to 24 hours a week making pizzas. The employer's policy requires employees to pay for food before it is eaten at work. The employer gives employees a 50 percent discount.

On October 24, the claimant was one of three employees working. The employer received a customer complaint that their pizza order was late and mixed up. The customer asked for a discount. When Yamagata tried to give the claimant a warning for problems that occurred on October 24, he asked her to review the video from that night.

Yamagato reviewed the video and saw the claimant and others eating pizza that no one had paid for. On October 24, a taco pizza was placed on top of an oven until the customer picked it up. This was the normal procedure. When the customer did not pick up the pizza, the claimant planned to cut it up, put it in a warmer and sell the pizza as slices. The cashier, the acting manager on that shift, told the claimant the pizza could not be sold because of the tomatoes and lettuce on it. She said the pizza was garbage and told him to throw it away. Before the claimant threw this pizza away, he asked if anyone wanted a slice. The claimant ate a slice. No one paid any money to eat the "garbage" pizza. The employer charged \$2.16 a slice so the employer would have charged the employees \$1.08 a slice.

When Yamagato reviewed the video she noticed the claimant consume a slice of the pizza. Even though the claimant's job was not in jeopardy before this incident, the employer discharged him on September 28 for eating the employer's food without paying for it. The other employees were not discharged after the employer concluded the claimant was the employee training during that shift and encouraged others to eat the pizza.

The claimant established a claim for benefits during the week of October 26, 2014. He has filed for and received benefits since October 26, 2014. The employer's representative participated at the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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 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).

The employer established business reasons for discharging the claimant but the evidence does not establish that the claimant intentionally or substantially disregarded the employer's interests. Prior to October 24, the claimant's job was not in jeopardy. The claimant may have used poor judgment when he invited other employees to eat pizza that was garbage and ate a slice himself without paying anything. Additionally, failing to pay \$1.08 for food that was to be thrown away does not establish a substantial and intentional disregard of the employer's interest. The claimant did not commit work-connected misconduct. As of October 26, 2014 the claimant is qualified to receive benefits.

DECISION:

The representative's November 24, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for business reasons but the claimant did not commit work-connected misconduct. As of October 26, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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