

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN C GARLICK
Claimant

APPEAL NO. 10A-UI-06524-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/28/10
Claimant: Appellant (1)

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 23, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on June 23, 2010. Employer participated by Connie Smith, manager—Bondurant store. The claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Connie Smith and Employer's Exhibits 1-3.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a convenience store chain. The claimant was a part-time cashier at the store in Bondurant, Iowa. The claimant was hired on March 12, 2009. He was terminated on March 17, 2010, for theft of company property.

The incident that led to the claimant's termination occurred on March 15, 2010. The claimant was observed on video surveillance tape as leaving the store with a bag of donuts without paying for the donuts. The claimant was not on duty at the time. The employer has a written policy that if an employee is in the store and is not on duty, all merchandise must be paid for at the full price.

The manager, Connie Smith, met with the claimant on March 17, 2010. Theft of company property is cause for dismissal. The claimant was aware of the employer's policies on purchase of items from the store. (Exhibit 3) The claimant offered no explanation for his failure to pay for the donuts.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. One of the most fundamental duties owed to the employer is honesty. An employer can reasonably expect that an employee will not misappropriate the employer's property. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant took a bag of donuts from the store without paying for them. Connie Smith, the manager of the store, testified that she observed this on surveillance tape. Theft of company property leads to immediate dismissal. The claimant offered her no explanation for his actions when she met with him on March 17, 2010. The claimant did not appear at the hearing. Since the employer has established misconduct, benefits are denied.

DECISION:

The decision of the representative dated April 23, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs