

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL G GEPNER**  
Claimant

**APPEAL NO. 11A-UI-15311-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 10/23/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.6-2 – Timely Appeal

**STATEMENT OF THE CASE:**

Michael G. Gepner filed an appeal from an unemployment insurance decision dated November 16, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held December 27, 2011, with Mr. Gepner participating and presenting additional testimony by Nancy Gepner. Store Manager Brandy Anderson participated for the employer, Casey's Marketing Company. Exhibit D-1 was admitted into evidence.

**ISSUES:**

Has the claimant filed a timely appeal?

Was the claimant discharged for misconduct in connection with the employment?

**FINDINGS OF FACT:**

Michael G. Gepner was employed by Casey's Marketing Company from December 17, 2010, until he was discharged October 25, 2011. He worked as a pizza maker. The events leading to the discharge occurred on October 21, 2011. An off-duty coworker reported to Store Manager Brandy Anderson that Mr. Gepner hung up on her at approximately 5:30 p.m. when she called to order a pizza. She reported that further calls to the store were unanswered. She called the store on another line to order the pizza. She still had to wait approximately 15 minutes for the pizza to be completed.

October 21, 2011, was a "Football Friday." Mr. Gepner made pizzas both before and after 5:30 p.m. He forgot to log the fact that he had to dispose of a tray of cookies during that evening.

The decision from which Mr. Gepner has appealed states that it would become final unless an appeal was postmarked by November 26, 2011, or received by the Agency by that date. November 26, 2011, was a Saturday. Mr. Gepner actually received the decision on November 29, 2011. He filed an appeal on the same day that he received the decision.

## REASONING AND CONCLUSIONS OF LAW:

The first question is whether the administrative law judge has jurisdiction to rule on the merits of the case. He does.

Although Iowa Code section 96.6-2 gives an individual only ten days to file an appeal, additional time for filing may be granted if the delay is the fault of the United States Postal Service or Iowa Workforce Development. See 871 IAC 24.35. The evidence in this record establishes that Mr. Gepner received the decision on November 29, 2011, and filed his appeal on the same day. Under these circumstances, the appeal is accepted as timely.

The remaining question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does 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.

Ms. Anderson, the employer's only witness, was not present at the store on October 21, 2011. The employee who complained of Mr. Gepner's behavior was not called to testify. Ms. Anderson stated that she had observed security tape of the approximate time that the incident supposedly occurred. She stated that she saw Mr. Gepner hang up the phone. She testified that the tape did not have audio. From this, the administrative law judge concludes that Ms. Anderson could not have determined if the call that she observed was from the coworker or whether Mr. Gepner had prematurely ended the call. Ms. Anderson testified that she did not

look at the security tape for times other than the exact time of the incident. Specifically, she had no information as to Mr. Gepner's productivity either before or after the time in question. The evidence does not establish that Mr. Gepner deliberately hung up on the coworker or that he refused to fill her order. He acknowledged forgetting to log the fact that he had disposed of a tray of cookies, but Ms. Anderson testified that she had no idea if other employees had been discharged for that omission. The administrative law judge concludes that the evidence does not establish a current act of misconduct leading to discharge. Benefits are allowed.

**DECISION:**

The unemployment insurance decision dated November 16, 2011, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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