

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOSHUA M MARRARD
1005 – 26TH AVE SW
ALTOONA IA 50009 3916

CASEY'S MARKETING CO
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-03928-DWT
OC: 03/12/06 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's March 28, 2006 decision (reference 01) that concluded Joshua M. Jarrard (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2006. The claimant participated in the hearing with his witnesses, Chelsea Sigmund and Kay Sigmund. Elizabeth Smith, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a part time pizza maker on April 27, 2005. In early March 2006, the claimant indicated he was going to resign because the employer scheduled him to work too many late hours. The claimant went to school and he could not work as many hours as the employer scheduled him to work. Smith talked to the claimant. The two of them reached an agreement where the claimant would be scheduled fewer hours and he would continue his employment.

Just after reaching this agreement, on March 10, 2006, the claimant learned his girlfriend's younger sister had passed away in Nebraska. He wanted to go to Nebraska to be with his girlfriend and go to the funeral. The claimant planned to go to Nebraska when he finished his scheduled shift on March 10. The claimant was scheduled to work on March 11 from 4:00 to 11:00 p.m. The claimant told the assistant manager he would not be at work the next day and why. The assistant manager was not happy with the claimant and told him that if he did not report to work as scheduled the next day, he would be discharged.

Although the claimant had a previous attendance problem, he had resolved his attendance issues in 2006. The claimant's job was not in jeopardy prior to March 10, 2006. The claimant did not appreciate the assistant manager's comments with his girlfriend present. The claimant went to Nebraska with his girlfriend. The claimant did not report to work on March 11 or any time after March 10. Even though the assistant manager did not have the authority to discharge employees, the claimant had no way of knowing the assistant manager could not discharge him even though she told the claimant he would be discharged.

When the claimant did not return to work or contact the employer after March 10, 2006, Smith concluded the claimant quit his employment. The assistant manager did not inform Smith about the funeral the claimant attended or anything about the conversation she had with the claimant on March 10.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Since Smith did not talk to the claimant on March 10 and the assistant manager did not testify, the claimant's and his witness's testimony as to what the assistant manager told the claimant on March 10 must be given more weight than the employer's reliance on hearsay information. The employer also acknowledged that even though the assistant manager did not have the authority to discharge employees, the claimant had no way of knowing this. The claimant reasonably concluded the employer discharged him when he went to a funeral on March 11 instead of reporting to work as scheduled.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The assistant manager refused to give the claimant time off for a death. The assistant manager informed the claimant he would be discharged if he failed to report to work as scheduled the next day. Even though the claimant had previous attendance issues, he had resolved these problems and his job was not in jeopardy in mid-March. Under the facts of this case, the claimant did not commit work-connected misconduct. The assistant manager's insistence that the claimant report to work on March 11 or he would be discharged was not reasonable under the facts of this case. The claimant did not commit work-connected misconduct. As of March 12, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 28, 2006 decision (reference 01) is affirmed. The employer's assistant manager discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 12, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/tjc