

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEN C KNAUSE
Claimant

APPEAL NO. 11A-UI-04323-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S RETAIL COMPANY
Employer

OC: 02/06/11
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Casey's Retail Company filed a timely appeal from an unemployment insurance decision dated March 23, 2011, reference 01, that allowed benefits to Ben C. Knause. After due notice was issued, a hearing was held in Des Moines, Iowa, on May 24, 2011, with Mr. Knause participating. Lynette Walker accompanied Mr. Knause but was not called to testify. Custodial Services Supervisor Bryan Franklin participated for the employer. Employer Exhibits One through Five were admitted into evidence. The administrative law judge takes official notice of Agency benefit payment records.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Ben C. Knause was employed by Casey's Retail Company from January 9, 2006, until he was discharged February 7, 2011. He last worked as a custodian.

After receiving reports from two other employees that Mr. Knause smelled strongly of alcohol, Custodial Services Supervisor Bryan Franklin confronted Mr. Knause at approximately 5:00 p.m. on February 7, 2011, a half hour after Mr. Knause's shift had begun. Mr. Franklin, too, smelled alcohol on Mr. Knause's breath. He noted that Mr. Knause seemed lethargic, was moving slowly and deliberately, and that his eyes were bloodshot. Mr. Franklin asked Mr. Knause if he had been drinking. Mr. Knause replied, "Not tonight." Mr. Knause admitted to drinking a six-pack of beer in the early morning hours of February 7.

The claimant has received unemployment insurance benefits since filing a claim effective February 6, 2011.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The evidence in the record establishes that three individuals smelled alcohol on Mr. Knause's breath and that his supervisor noted that his actions were consistent with an individual being under the influence of alcohol. This evidence, combined with Mr. Knause's admission to drinking earlier in the day, persuades the administrative law judge that Mr. Knause was discharged for being under the influence of alcohol while at work. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The question of whether Mr. Knause has received benefits that must be repaid is remanded to the Unemployment Insurance Services Division.

DECISION:

The unemployment insurance decision dated March 23, 2011, reference 01, is reversed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The question of repayment of benefits is remanded.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw