

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC C YARBROUGH
Claimant

APPEAL NO. 09A-UI-06243-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING CO
Employer

OC: 03-29-09
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 14, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 19, 2009. The claimant did participate. The employer did participate through Aaron Evarts, Assistant Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a clerk/cashier/cook full time beginning October 17, 2007 through March 26, 2009 when he was discharged.

On March 26, 2009 the claimant asked Aaron Evarts, his supervisor, why another employee had used the 'hot' sandwich bread to make the 'cold' sandwiches. Mr. Evarts explained that the store had run out of the 'cold' sandwich bread so he had instructed the employee to use the 'hot' bread in order to have sandwiches to offer to customers. Since the store still had not received the bread delivery Mr. Evarts instructed the claimant to use the 'hot' bread to make the 'cold' sandwiches. The decision as to which bread to use was Mr. Evarts. The claimant began to argue with Mr. Evarts and told him that it was unacceptable to use the wrong bread to make the sandwiches and that the store should forgo any cold sandwiches until the bread delivery was made. Mr. Evarts told him to make the sandwiches as instructed. The claimant then said to Mr. Evarts that since he had only been an employee for six months and the claimant had been there for over two years, he, the claimant, knew better what to do and he would not make the sandwiches. The claimant was told again to make the sandwiches as instructed when he began to swear at Mr. Evarts and yell at him. The claimant was instructed to leave the store when he began using profanity towards Mr. Evarts. The claimant eventually left the store after Mr. Evarts threatened to call the police if he did not do so. The claimant had been previously warned on February 14 about using profanity when speaking to Mr. Evarts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. Endicott v. IDJS, 367 N.W.2d 300 (Iowa App. 1985). The decision on what to do when the store ran out of a particular type of bread was up to Mr. Evarts, not the claimant. The claimant was instructed to make the sandwiches in a particular way. It was part of the claimant's regular job duties to make sandwiches so it was not unreasonable for him to be asked to do so. The claimant's refusal to use a different type of bread to make sandwiches was unreasonable under the circumstances. Additionally the claimant's use of profanity was unacceptable. "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made." Myers v. EAB, 462 N.W.2d 734 (Iowa App. 1990). The claimant had been previously warned not to use profanity but did so again. Claimant's refusal to perform his sandwich making duty and his use of profanity are misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The April 14, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css