

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY M BISCHOF
Claimant

APPEAL NO. 12A-UI-00277-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**OC: 05/15/11
Claimant: Appellant (1)**

Section 96.5-2-A – Discharge for Misconduct\

STATEMENT OF THE CASE:

The claimant filed an appeal from an unemployment insurance decision dated December 30, 2011, reference 02, which concluded that the claimant was not eligible for unemployment insurance benefits. A telephone hearing was scheduled for March 16, 2012. The claimant participated. The employer participated by Anna Yotty, Manager. The record consists of the testimony of Anna Yotty and the testimony of Cory Bischof.

ISSUE:

Was 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 owns and operates a chain of convenience stores. The claimant worked at the store located in Kalona, Iowa. The claimant was hired on August 1, 2011, as a full-time cashier. His last day of work was November 8, 2011. He was terminated on November 8, 2011.

The incident that led to the claimant's termination occurred on November 7, 2011. The claimant and another employee made a pizza and ate it without paying for it. The employer has written rules, of which the claimant was aware, that food from Casey's could not be consumed or taken from the store without paying for it.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to termination occurs when there are deliberate acts or omissions that constitute a material breach of worker's duty to the employer. One of the most important duties owed by a worker is honesty. An employer can reasonably expect that an employee will not take its property without paying for it. The employer has the burden of proof to establish misconduct.

In this case the evidence showed that the claimant and another employer ate a pizza without paying for it. The pizza was made at the store using the store's ingredients. The employer's written policies, of which the claimant was aware, state that no food may be consumed without paying for it first. The claimant tried to justify his conduct by saying that the other employee said it was "okay." The claimant knew that the rules prohibited what he did. The claimant's action in eating part of the pizza were deliberate on his part. This is misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated December 30, 2011, reference 02, is affirmed. The decision disqualifying the claimant from receiving benefits remains in effect. This decision will become final unless a written request establishing good cause to reopen the record is made to the administrative law judge within 15 days of the date of this decision.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css