

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COREY D TONN**  
Claimant

**APPEAL NO. 08A-UI-08702-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S RETAIL CO**  
Employer

**OC: 07/06/08 R: 02  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Casey's, filed an appeal from a decision dated September 19, 2008, reference 02. The decision allowed benefits to the claimant, Corey Tonn. After due notice was issued a hearing was held by telephone conference call on October 14, 2008. The claimant participated on his own behalf. The employer participated by District Manager Michael Meyer, Regional Manager Kirk Hayworth and was represented by TALX in the person of Alyce Smolsky. Exhibits One and Two were admitted into the record.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Corey Tonn was employed by Casey's from July 10, 1994 until May 7, 2008 as a full-time area supervisor. On April 17, 2008, Regional Manager Kirk Hayworth passed by the hotel where the claimant and another Casey's supervisor were staying around 7:00 a.m. The vehicles which both individuals had been assigned were still parked in the parking lot. Mr. Hayworth observed these vehicles until 7:38 a.m. and neither person left. He contacted the store at the end of that time to ask if the claimant was there and was told he was not. He then took pictures of the vehicles and contacted Area Manager Mike Meyers and the two of them agreed to meet later to discuss the proper course of action to take.

On April 23, 2008, Mr. Meyers and Mr. Hayworth met and on that same day the claimant was ten minutes late to the store to which he was assigned. Mr. Meyers had also ascertained the claimant had been late for corporate training on March 31 and April 2, 2008, by 45 minutes and one hour. The decision was made on April 23, 2008, to discharge him for his tardiness but Mr. Meyers did not notify him of the decision for two weeks, until May 7, 2008. Mr. Meyers had been gone for that two-week period due to a death in the family and did not refer the matter to anyone else in the company to complete the discharge in his absence.

## 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.

The claimant had many explanation for his tardies, including taking a wrong turn on his way to one store and being on the phone or at other stores dealing with paperwork problems or changing gas prices on the days he arrived late at other stores. The employer did not adequately rebut any of these assertions. But the employer did wait two weeks after the final incident of tardiness to discharge the claimant, even though the decision had been made on the day the final tardiness occurred. There is nothing to indicate only Mr. Meyers was authorized to discharge Mr. Tonn, or that he could not have referred the matter to Mr. Hayworth or another supervisor. His decision to wait two weeks until he returned from his personal leave puts this beyond a current final act of misconduct as required by the above Administrative Code section and disqualification may not be imposed.

**DECISION:**

The representative's decision of September 19, 2008, reference 02, is affirmed. Corey Tonn is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs