

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TRACI D HAPPEL
Claimant

APPEAL NO. 18A-UI-03859-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/04/18
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Traci Happel (claimant) appealed a representative's March 21, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits after her separation from employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 19, 2018. The claimant was represented by Michael Tulis, Attorney at Law, and participated personally. The employer was represented by Raul Ybanez, Hearings Representative, and participated by Catherine Jones, Store Manager, and Vicky Allen, Second Assistant Manager. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 25, 2017, as a part-time store employee. The employer told the claimant to sit at a desk and acknowledge she understood the employer's policies. The claimant was unable to access or read any of the policies except the anti-harassment policy. The employer recorded she understood the code of business conduct on May 27, 2017, and the handbook on August 8, 2017. The claimant did not know the employer kept a copy of the policies in a cupboard at work.

The handbook had a policy that said an employee could be disciplined for removing company merchandise without permission. The claimant was supposed to go through bakery goods and remove past due items. The store manager told the claimant that the rules said she was not supposed to take them home without paying for them but it was okay if she did.

On March 5, 2018, the claimant bagged up stale cookies that were past their sell-by date. She recorded the cookies on a tracking sheet. The claimant had bags of trash in her hands along with the bag of stale cookies and was ready to leave work at the end of her shift. The second assistant manager told the claimant she could not take the cookies without paying for them. At

this point, the cookies had no value. The claimant was surprised by this and said she would throw them in the trash. She left the store, went to the trash bin, and threw all the bags in the bin. She then left the parking lot. Later, the second store assistant manager checked the bin for the bag of cookies and did not see it. She did not lift debris or rummage in the dumpsters to try to find it.

The second store assistant manager told the store manager that the claimant stole stale cookies. The store manager looked at the video of the claimant leaving the store with the bags of trash and the bag of stale cookies. The video did not extend past the door of the store. The store manager did not ask the claimant for information about the incident. On March 7, 2018, the store manager terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had given the claimant conflicting information about the employer's rules for distribution of stale food, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations, the employer's rules should be provided to the employee. Employees should not be expected to ask for them. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 21, 2018, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs