

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLIFFORD R PRIVIA
Claimant

APPEAL NO. 11A-UI-01395-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 10/31/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 2, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on March 8, 2011. Claimant participated personally. Employer participated by Ms. Tricia Johnson, Store Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Clifford Privia was employed by Casey's General Stores from June 4, 2008 until November 3, 2010 when he was discharged from employment. The claimant held the position of full-time clerk/cashier and was paid by the hour. His immediate supervisor was Ms. Tricia Johnson.

The claimant was discharged on November 3, 2010 based upon his failure to follow reasonable work-related procedures related to the cleaning of containers and proper storage of meat products. Mr. Privia was aware of the required procedures and had demonstrated the ability to follow them in the past. Prior to being discharged, Mr. Privia had received a number of warnings from the company for not properly cleaning kitchen areas and/or ovens. The claimant had received two warnings on October 19, 2010 and an additional warning on November 3, 2010. The final warnings informed Mr. Privia he was subject to discharge if these employment issues continued.

It is the claimant's position that he "forgot" to clean and properly store the meat products. Mr. Privia had recently been assigned to work as a cashier and had only been assigned cooking duties approximately one day each week.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It is.

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.

In this case the evidence in the record establishes that Mr. Privia had demonstrated the ability to adequately perform the duties incident to his job as a cook/cashier. Prior to discharging Mr. Privia the employer had repeatedly warned the claimant about his failure to follow kitchen cleaning, oven cleaning and closing procedures and the claimant had been warned that failure to follow required procedures in the future could result in his termination from employment.

The claimant was discharged when he failed to properly clean containers and place meat products in the designated refrigerated portion of a storage area. The claimant was aware of these job responsibilities and had performed them in the past.

Based upon the number of warnings that had been served upon the claimant regarding failure to follow procedures and the most recent incident, the administrative law judge concludes that the employer has sustained its burden of proof in establishing job-related misconduct sufficient to warrant the denial of unemployment insurance benefits.

DECISION:

The representative's decision dated February 2, 2011, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs