

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FRANK P MARPLE
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 15A-UI-05713-EC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/26/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the May 12, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a discharge for misconduct. The parties were properly notified about the hearing. A telephone hearing was held on June 23, 2015. The claimant, Frank Marple, participated. The employer, Casey's Marketing Company, participated through Sherry Decker, Area Supervisor. The employer submitted exhibits which were marked as Exhibit E and were admitted into the record without objection. These exhibits included several DVD recordings of surveillance video in the Casey's store where the claimant worked.

ISSUE:

Was the separation from employment a disqualifying discharge for misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a store manager at the Casey's General Store in Osceola, Iowa, from November 14, 2012, until this employment ended on April 30, 2015, when his employment was terminated.

Sherry Decker is the area supervisor for the employer. Her area includes the store the claimant managed. On April 28, 2015, she audited his store's payroll for the time period from March 22, 2015 to April 4, 2015. During this audit, she noticed that the claimant changed his working hours several times during that time period. Ms. Decker compared the time clock reporting to the surveillance video of the claimant's store. She concluded that he falsified time records. His employment was terminated on April 30, 2015, for this reason.

Ms. Decker also noted that she observed the claimant's conduct via the surveillance video. She stated that he did not properly provide orientation and training to new employees during this time period. She noticed that he spent time leaning on the counter in the kitchen area, talking to the employees, and not performing work, also during this time period.

The claimant admitted that he changed the work time records, and explained why he did so. He is a salaried employee as a store manager. He is paid the same salary no matter how many hours he works. On March 24, he injured his right arm while stocking produce in the cooler. He

reported this injury to Sherry Decker. He left the store at 11:56 a.m. to go to the emergency room. On March 25, he attended Ms. Decker's meeting at 9:00 a.m., but forgot to clock in that morning. The pain in his right arm was bothering him. He did not go through the manuals with the new employees because these manuals weigh 20 pounds. He could not lift them with his injured right arm. He spent time in the kitchen area because he wanted to receive some training, to better understand those duties. He also wanted to get to know the kitchen employees.

The claimant was not previously warned that his employment could be terminated for falsifying his time records. A memorandum was issued on April 1, 2015, regarding accurate reporting and accounting for all hours worked. The claimant and his store employees signed and dated this memorandum. This memorandum was issued after the dates described above.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy. But, 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.

This claimant was an at-will employee. He was paid a salary for a 45 hour workweek. He did not receive any additional compensation for extra hours worked.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was an exercise of poor judgment, but it did not meet the definition of disqualifying misconduct as described above. The employer had not previously warned the claimant about the issue leading to the separation, and therefore did not meet the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that changes are required in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

DECISION:

The May 12, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/css