

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBY W UEKER

Claimant

APPEAL NO. 13A-UI-04210-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/17/13

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated April 3, 2013, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on May 13, 2013. The claimant participated. The employer participated by Ms. Marlene Rick, Store Manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Bobby Ueker was employed by Casey's Marketing Company from October 22, 2012 until March 12, 2013 when he was discharged from employment. Mr. Ueker was employed as a full-time pizza maker/cashier and was paid by the hour. His immediate supervisor was Marlene Rick.

Mr. Ueker was discharged after a customer complaint verified by security tape showed that Mr. Ueker had violated company policy by preparing a pizza without the proper visor, apron and gloves; and that he had also violated the company cell phone policy by wearing a Bluetooth apparatus in his ear while performing his duties.

Because of a customer complaint about an unsatisfactory pizza and Mr. Ueker's failure to be wearing proper attire, the store manager, Ms. Rick reviewed security tapes that confirmed Mr. Ueker had not followed the company policy although he had been specifically warned in writing in the past about wearing proper required company attire while making pizzas. Although the patron and another worker had alleged that Mr. Ueker had also used profanity during the incident, Ms. Rick could not confirm that profanity had been used as she was not present at the time and the security camera did not have voice capability.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In this matter, the evidence establishes that Mr. Ueker had previously been warned about failure to wear proper required clothing and that the claimant was also aware of the company's policy which prohibited cell phone use. The claimant's failure to follow the company's dress requirement after being warned showed an intentional disregard for the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Law. Administrative law judge concludes the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated April 3, 2013, reference 01, is affirmed. 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 is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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