

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA S GRANDSTAFF

Claimant

APPEAL NO. 09A-UI-11612-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 07/12/09

Claimant: Appellant (2)

Section 96.5-2-a - Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 7, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 27, 2009. Claimant participated. Employer participated by Gary Krier, store manager. The record consists of the testimony of Gary Krier; the testimony of Joshua Grandstaff; and Employer's Exhibits 1-4.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant started working at a Casey's store in Clive, Iowa, in November 2008. Prior to working at this particular location, the claimant had been employed by Casey's at other sites. The claimant's initial job was cashier/kitchen, but he was later promoted to second assistant manager in February 2009. Gary Krier, the store manager, started his employment on August 24, 2008 as a cashier and was promoted to assistant manager in October 2008. He was promoted again to full manager in December 2008.

The claimant's last day of work was July 1, 2009. He was terminated because the employer believed he had falsified his time records. On May 25, 2009, a store video showed the claimant leaving at 1:13 p.m. On May 30, 2009, a store video showed him arriving at 5:34 a.m. The claimant changed his payroll record to show him leaving at 2:13 p.m. on May 25, 2009, and arriving at 5:00 a.m. on May 30, 2009. These changes were made by the claimant on June 6, 2009.

Managers for Casey's do work "off the clock" and in order to get paid for those hours, a special form needed to be filled out. Mr. Krier did not send these forms in. The claimant wanted to be paid for his time off the clock and so he altered the payroll records in order to get paid.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Good faith errors in judgment or discretion do not meet the statutory definition of misconduct.

The evidence in this case showed that the claimant did alter two time cards in order to get paid for time he put in "off the clock." He was supposed to fill out a form but he testified that his manager did not send those forms in. The claimant used poor judgment in altering his timecards in order to be paid for his time. There is no evidence that he was attempting to get paid for work he did not perform. Rather he was shortcutting the process by not filling out the proper form.

An employer does have a reasonable expectation that an employee will accurately prepare his time card so that wages are properly paid. The claimant was frustrated about the way his off the clock work was handled and decided to change his time card in order to get those off the

clock hours paid. There is no evidence that the claimant did this on a repeated basis. Although the claimant's actions represented poor judgment and may have warranted termination, the employer has not shown misconduct. Benefits will be allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 7, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs