IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

WILLIAM D JONES Claimant **CASEY'S MARKETING COMPANY** Employer	**APPEAL 17A-UI-04108-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/19/17** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 4, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 8, 2017. Claimant participated. Employer participated through manager Jennifer Karr. Employer Exhibit 1 was admitted into evidence with no objection.

ISSUE:

Was the claimant discharged for disqualifying job-related 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 employee from June 10, 2015, and was separated from employment on March 20, 2017, when he was discharged. As a store employee, claimant's job duties included being a cashier, watching the gas pumps, and cleaning.

The employer has a written gas drive off policy. Employer Exhibit 1. A gas drive off is when someone pumps fuel into their vehicle and then leaves without paying for it. The policy provides that "[s]tore employees must watch the pumps and collect for all gasoline sales." Employer Exhibit 1. The policy provides that if the policy is violated, the employee may receive a corrective action, up to and including discharge. Employer Exhibit 1. Claimant was aware of the policy. Employer Exhibit 1.

The final incident occurred on March 18, 2017, when there was a gas drive off while claimant was working his scheduled shift. Claimant was the only employee running the cash register when the gas drive off occurred. On March 18, 2017, a customer put gas in his vehicle, then came into the store and collected items to purchase. The customer then purchased the items from claimant, but the customer did not pay for the gas. Claimant did not ask the customer if he had any fuel to pay for and the customer drove off without paying for the gas. Claimant immediately called Ms. Karr after the gas drive off and informed her about the gas drive off.

Claimant also asked Ms. Karr if he was being fired. Ms. Karr told claimant she would deal with it when she came to work on March 20, 2017.

On March 20, 2017, Ms. Karr met with claimant regarding the gas drive off. Ms. Karr showed claimant the video of the incident. From the angle of the cameras, the video showed the customer walk from the customer's vehicle to the store, purchase items, and then walk from the store back to the vehicle. . Claimant told Ms. Karr he did not ask that customer if he had fuel to purchase, but he did ask the other customers. Claimant told Ms. Karr he could not identify the customer. Ms. Karr then discharged claimant.

On July 18, 2016, the employer gave claimant a written warning for a gas drive off. Employer Exhibit 1. Claimant was warned that his job was in jeopardy. Employer Exhibit 1. Claimant signed for the warning. Employer Exhibit 1. On May 1, 2016, the employer gave claimant a written warning for two gas drive offs on the same day (April 24, 2016). Employer Exhibit 1. Claimant signed for the warning. Employer Exhibit 1. On February 24, 2016, the employer gave claimant a written warning for a gas drive off. Employer Exhibit 1. Claimant signed for the warning. Employer Exhibit 1. On January 26, 2016, the employer gave claimant a written warning for a gas drive off. Employer Exhibit 1. Claimant signed for the warning. Employer Exhibit 1. On October 29, 2015, the employer gave claimant a verbal warning for a gas drive off. Employer Exhibit 1. The employer documented the verbal warning in writing and claimant signed for the warning. Employer Exhibit 1. On May 1, 2016, January 26, 2016, and October 29, 2015, claimant was told on his corrective actions to ask every customer if they had fuel. Employer Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policy that required "[s]tore employees [to] watch the pumps and collect for all gasoline sales" is reasonable. Prior to March 18, 2017, the employer had given claimant four written warnings and one verbal warning for gas drive offs. During three of claimant's prior warnings, the employer instructed him to ask every customer if they have fuel to pay for, yet on March 18, 2017, claimant failed to ask the customer if he had fuel to pay for when the customer purchased other items. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence that on March 18, 2017, after claimant had been previously warned, he failed to ask a customer if they had fuel to pay for when the customer made other purchases and a gas drive off occurred. Benefits are denied.

DECISION:

The April 4, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs