

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENISE K BEENKEN**  
Claimant

**APPEAL NO. 07A-UI-10326-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**  
Employer

**OC: 10/14/07 R: 02  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 2, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 27, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Kristine Lewellen participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as a kitchen worker for the employer from March 24, 2002, to October 12, 2007. She was informed that under the employer's work rules, employees were required to pay for items before they were removed from the store or consumed, including stale food products. Despite this work rule, there was a practice allowed by supervisors in the store of employees being allowed to take stale food items that otherwise would be thrown away.

On October 2, 2007, the claimant left the store with three stale sandwiches that had been removed from the food warmer without paying for them. On October 11, two employees falsely reported to the store manager, Kristine Lewellen, that the claimant had made three fresh sandwiches at the end of her shift on October 2 and had left the store without paying for the items.

When Lewellen confronted the claimant about the sandwiches on October 12, she insisted that the sandwiches she had taken were stale. Lewellen discharged the claimant for taking food products without paying for them.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that she took stale food items and there was a practice allowed in the store for taking stale food items that otherwise would have been thrown out. The proof regarding taking fresh sandwiches amounts to hearsay from individuals who did not testify at the hearing and whose credibility is suspect since they did not report the matter until a week after it occurred. No willful and substantial misconduct has been proven in this case.

**DECISION:**

The unemployment insurance decision dated November 2, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs