

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIAL L GREENLEE**  
Claimant

**CASEY'S RETAIL COMPANY**  
Employer

**APPEAL 20A-UI-02614-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 03/01/20**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

Employer filed an appeal from the March 16, 2020 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 1, 2020, at 9:00 a.m. Claimant participated with his attorney, Emily Wilson. Employer participated through Brad Vry, Warehouse Supervisor. Employer's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct.  
Whether claimant was overpaid benefits.  
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time lead custodian from March 2015 until his employment with Casey's Retail Company ended on February 24, 2020. Claimant worked Monday through Friday from 7:00 a.m. until 3:30 p.m. Claimant's direct supervisor was Brad Vry, Warehouse Supervisor.

Employer has a drug and alcohol policy prohibiting employees from using alcohol during work hours or being under the influence of alcohol and drugs while on the job. (Exhibit 1) Employer's policy defines "under the influence of alcohol" as a blood alcohol concentration of 0.04 or greater and provides for alcohol testing upon reasonable suspicion that an employee is under the influence of alcohol in violation of employer's policy. (Exhibit 1) The policy sets forth a testing procedure and proposed discipline for confirmed positive alcohol tests. (Exhibit 1) The policy is outlined in the employee handbook; claimant received a copy of the handbook. (Exhibit 1 & 2)

On February 21, 2020, employer held its mandatory annual safety meeting. The meeting was held in a conference room at a hotel. Employer pays employees to attend the meeting. Claimant arrived at the meeting on February 21, 2020 with an open beer, which he had purchased at the hotel bar next to the conference room. Employer observed claimant drinking the beer, slurring his speech and smelling of alcohol; employer asked claimant if he had been drinking alcohol that day and claimant admitted that he had been drinking alcohol at home prior to the safety meeting as he was on vacation that week. Employer asked claimant to dispose of the beer, which claimant did. Employer did not ask claimant to undergo alcohol testing pursuant to its drug and alcohol policy. On February 24, 2020, employer discharged claimant for violation of its drug and alcohol policy for the incident on February 21, 2020. Claimant had no prior warnings for similar conduct.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant's actions on February 21, 2020 can best be described as an isolated incident of extremely poor judgment and discretion. Employer suspected claimant of being under the influence of alcohol; however, employer did not follow the testing provisions of its drug and alcohol policy. Without alcohol testing results, employer has not established that claimant was under the influence of alcohol while on the job. Employer has established that claimant violated the policy against using alcohol during work hours by taking a drink of the beer that he purchased at the hotel bar. However, this conduct by claimant does not rise to the level of a substantial and material breach of his duties and obligations to employer or a willful disregard of employer's interests. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

**DECISION:**

The March 16, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.



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May 5, 2020  
Decision Dated and Mailed

acw/scn