

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON T STUMPF
Claimant

APPEAL NO. 12A-UI-11262-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAREWAY STORES INC
Employer

OC: 08/26/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Fareway Stores, Inc. filed a timely appeal from a representative's decision dated September 17, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 15, 2012. Claimant participated. Employer participated by Tom Downs, John Newburger, and Maggie Worrall, Hearing Representative.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Aaron Stumpf was employed by Fareway Stores, Inc. from July 23, 2007 until August 28, 2012 when he was discharged from employment. Mr. Stumpf worked as a part-time meat market employee and was paid by the hour. His immediate supervisor was Tom Downs.

On August 23, 2012, Mr. Stumpf was observed by the market manager preparing a deli sandwich for another employee. Mr. Newburger was observing the claimant to make sure that he was correctly pricing the products that he was preparing and serving. Claimant was observed failing to weigh each of the ingredients of the sandwich. Mr. Newburger subsequently weighed the sandwich and determined that the sandwich had been priced to the other employee at \$.68 less than the price of the sandwich should have been when all ingredients were weighed and priced out accordingly. Mr. Stumpf agreed that he knew that each ingredient should be priced out and included in the price. At that time a warning was issued to Mr. Stumpf by Mr. Newburger. The matter was further referred to management and subsequently a decision was made to terminate Mr. Stumpf based upon the employer's conclusion that his actions constituted "theft."

Although aware of his responsibility to weigh each ingredient, the claimant did not do so on the day in question as he was busy at the time and attempted to estimate the value of the ingredients in the sandwich made for the other employee based upon previous similar purchases. Prior to the incident in question the claimant had not been warned or counseled for similar conduct.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not .

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 issue is not whether the employer made a correct decision in separating the claimant but whether the claimant is entitled to unemployment insurance benefits. Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of job insurance benefits. Misconduct must be "substantial." When based upon carelessness, the carelessness must actually indicate a "wrongful" intent to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor

work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa 1988).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation.

In the case at hand the evidence shows the claimant had not been previously warned or counseled about similar conduct, however, the employer made a management decision to terminate the claimant because he had failed to follow company procedures in weighing each ingredient of a sandwich on the day in question. Claimant testified that he was busy at the time and that he had made a reasonable estimation of the value of the sandwich based upon previous sales that he had made to the same company employee of the same type sandwich. It appears that the employer initially issued a warning to the claimant but subsequently management reconsidered that decision and made a decision to terminate the claimant from employment.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for this reason but whether the discharge is disqualifying under the provisions of the Employment Security Law. While the decision to terminate Mr. Stumpf may have been a sound decision from a management viewpoint, the administrative law judge concludes that the claimant's conduct on August 23, 2012 was more in the nature of an isolated instance of poor judgment caused by busy working conditions and the claimant's belief that he had reasonably estimated the value of the sandwich he was preparing. The claimant was candid in explaining what had taken place and admitted fault when questioned by his employer. The administrative law judge concludes that the claimant's conduct did not rise to the level sufficient to disqualify the claimant from the receipt of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated September 17, 2012, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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