

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAJUAN S HARRIS
Claimant

APPEAL NO: 09A-UI-06053-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 03/22/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Pilot Travel Centers, L.L.C. (employer) appealed a representative's April 10, 2009 decision (reference 01) that concluded Dajuan S. Harris (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2009. The claimant participated in the hearing. Deanna Long appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 26, 2007. He worked full time as a prep cook/cashier in the employer's Council Bluffs, Iowa Arby's restaurant. His last day of work was March 23, 2009. The employer discharged him on that date. The reason asserted for the discharge was working without being clocked in and not purchasing food he ate.

The claimant had worked a shift beginning at about 3:00 p.m. on March 21 ending at 12:00 a.m. on March 22. He then went and got a friend from the airport. On the way home he was hungry so he stopped by the restaurant at approximately 3:30 a.m. The claimant was still in his uniform. The cashier on duty told the claimant that the cook had stepped out and asked the claimant to make two sandwiches that were on order. The claimant did so, and made his own breakfast burrito as well. He did not clock in for this work, which took about 15 minutes. As he was finishing making his burrito, the cook returned. When the claimant indicated he was going to go and pay for his sandwich, the cook told him he did not need to, that it could be his reward for helping out.

The employer provided second-hand information asserting that the cook had denied saying the claimant did not have to pay for the burrito. Likewise the employer asserted that the next day

when questioned the claimant had told an assistant manager that he had paid for the food. The claimant testified that he never said he had paid for the food.

The claimant has some prior discipline, most recently a warning on November 2, 2008 for insubordination and making or taking personal phone calls while at work. There had not been prior discipline with regard to similar issues as the basis for the discharge.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his failing to clock in while he helped out for 15 minutes and for failing to pay for the food he ate in reliance on the statement made by the cook. Under the circumstances of this case, the claimant's failures were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, and were good faith errors in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 10, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css