

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TIMOTHY R JOHNSTON**  
Claimant

**APPEAL NO. 18A-UI-11372-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S RETAIL COMPANY**  
Employer

**OC: 10/28/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's November 13, 2018, decision (reference 01) that concluded Timothy Johnston (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 7, 2018. The claimant participated personally. The employer participated by Mark Watterson, Store Manager, and Zontel McCann, Unemployment Insurance Consultant. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 2, 2018, as a full-time delivery driver. The claimant acknowledged the employer's digital handbook on March 5, 2018. The employer told the claimant he was not allowed to use the employer's computer when he was on the clock. The claimant did not know if he could look at the handbook on the employer's computer after work hours. He tried to look at it on his smartphone but he could not view it properly.

The employer had an unwritten rule that employees could not take breaks between 4:00 and 7:00 p.m. because it is a busy time of the day. The claimant's supervisor and manager told him he could take a break when he was not busy. The handbook stated, "Upon hire, the Store Manager must clearly outline the break guidelines and reporting requirements to the employee." If the claimant needed gas, he purchased gas with his BP card at a BP station because it was \$0.10 cheaper. The employer did not tell him he had to purchase gas from the employer, appear at work with a full tank, or only purchase gas when he was out on a delivery.

On July 11, 2018, the manager gave all employees who worked on a certain day a verbal warning for not stocking the cooler. The claimant told the manager that he did stock the cooler

when he was not delivering food but it was a busy night. The employer notified the claimant that further infractions could result in termination from employment.

Late in the claimant's employment, a new store manager was hired. On October 24, 2018, the claimant was working from 4:30 to 9:30 p.m. At 6:08 p.m. he was not busy and his car needed gas. Between 6:08 and 6:35 the claimant drove to a gas station, filled his tank, and returned to work. During that period, the employer did not contact him for any deliveries. On October 25, 2018, the employer terminated the claimant because he left the work site to fill his gas tank. The employer considered this a break.

The claimant filed for unemployment insurance benefits with an effective date of October 28, 2018. The employer participated personally at the fact finding interview on November 9, 2018, by Zontel McCann.

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

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). An employer may discharge an employee for any number of reasons or no reason at all, 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. Inasmuch as the employer had no rules governing the issues leading to the separation and had not previously warned the claimant about those issues, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's November 13, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs