

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS W SISNEY
Claimant

APPEAL NO. 14A-UI-03424-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 02/16/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 19, 2014, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on April 22, 2014, by telephone conference call. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Trina Small, general manager, and Alisha Weber, unemployment insurance consultant with Equifax—Talx UC Express. The record consists of the testimony of Trina Small; the testimony of Alisha Weber; and Employer's Exhibits 1-4. Official notice is taken of agency records.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a chain of convenience stores. The claimant worked at the store in Bondurant, Iowa. He was hired on November 15, 2012, as a full-time employee. He worked in the kitchen; checked out customers; and did store cleaning. His last day of work was February 16, 2014. He was terminated on February 17, 2014.

The incident that led to the claimant's termination occurred on February 16, 2014. The claimant made a mistake while making a customer's pizza. The claimant was angry with himself and talked to himself. The customer thought the claimant was speaking to her and was offended. She registered a complaint with the corporate office. Trina Small investigated the complaint and spoke to the claimant. He said that he was talking to himself out loud. The claimant was terminated because he had received two previous warnings for rude behavior.

The claimant received a written warning on April 5, 2013, because a complaint was received from a customer who was dissatisfied with the amount of time it was taking for a pizza order.

(Exhibit 3) A written warning was given on December 27, 2013, when the claimant told a customer that pizzas were no longer being made even though the kitchen was open for another hour. (Exhibit 4)

REASONING AND CONCLUSIONS OF 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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion in isolated instances. Unsatisfactory job performance is not misconduct. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant was discharged for talking to himself after he made an error on a customer's pizza order. What exactly he said to himself is not known since the claimant did not participate in the hearing and the employer provided no eyewitness testimony. Ms. Small did testify that the claimant told her he was speaking to himself and not to the customer. The administrative law judge concludes that the

claimant made an error in judgment when he spoke out loud to himself after he made a mistake on a customer order. He should have realized that he might be overheard by a customer. The claimant's actions, however, do not constitute misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 19, 2014, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs