

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA G BUSCHBOM
Claimant

APPEAL NO. 10A-UI-17462-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 10/17/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated December 21, 2010, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on February 28, 2011. Claimant participated personally. The employer participated by Michelle Degrado, Store Manager. Employer's Exhibits One through Six were received into evidence.

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: Jessica Buschbom was employed by Casey's General Stores from September 10, 2008 until October 19, 2010 when she was discharged for excessive absenteeism and tardiness. Ms. Buschbom worked as a full-time cook and was paid by the hour. Her immediate supervisor was Michelle Degrado.

Ms. Buschbom received warnings regarding her attendance and punctuality on January 27, 2010 and February 15, 2010. The claimant was warned that continuing attendance or punctuality issues would result in her termination from employment. During the claimant's final week of employment Ms. Buschbom reported to work 48 minutes late on October 14, 2010, 17 minutes late on October 15, 2010 and 42 minutes late on October 16, 2010. Although the claimant was scheduled to work on October 17, 2010, she did not report or provide notification. Ms. Buschbom left early on October 18, 2010 due to illness and was discharged the following day based upon her previous tardiness that week and her failure to report or provide notification on October 17, 2010. The claimant's leaving early on October 18, 2010 was not a factor in the employer's decision to terminate the claimant.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes sufficient misconduct to warrant the denial of unemployment insurance benefits. It does.

Iowa Code § 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 Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The court held that it must be excessive and unexcused and that the concept included tardiness, leaving early, etc. The court further held that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

In the case at hand the evidence establishes that Ms. Buschbom had been warned on more than one occasion about excessive absenteeism and tardiness and the claimant had arrived to work late on three occasions and had failed to report or provide any notification on a fourth occasion during the claimant's final week of employment.

The claimant's repeated tardiness and her failure to provide required notification showed a disregard for the employer's reasonable interest and standards of behavior they had a right to expect of their employees under the provisions of the Employment Security Act and benefits are denied.

DECISION:

The representative's decision dated December 21, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs