

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KASHA L GARRISON
Claimant

APPEAL NO. 11A-UI-02378-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

**OC: 11/21/10
Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Casey's General Stores filed an appeal from a representative's decision dated February 16, 2011, reference 01, which held that no disqualification would be imposed regarding Kasha Garrison's separation from employment. After due notice was issued, a hearing was held by telephone on March 23, 2011. The employer participated by Kim Maxheimer, Manager. Ms. Garrison did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Garrison was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Garrison was employed by Casey's from October 6, 2009 until November 6, 2010 as a part-time cashier. She worked approximately 24 hours each week. She was discharged from the employment.

Ms. Garrison was scheduled to be at work at 5:00 a.m. on November 6. The employer was finally able to reach her by phone at approximately 9:00 a.m. She indicated that her alarm had not gone off. She was told she had to report to work that day or she would be discharged. Because she failed to appear, she was separated from the employment. There had been three or four other occasions on which Ms. Garrison had failed to report for work without notice. She had been verbally warned about such conduct. She had told the employer that her boyfriend sometimes turned the alarm off because he did not want her to go to work.

Ms. Garrison filed a claim for job insurance benefits effective November 21, 2010. She has received a total of \$964.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Garrison was discharged because of her attendance. An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

Ms. Garrison's absence of November 6 is unexcused as it was due to oversleeping, which is not good cause for missing work. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Although she would have been late, she had the choice of coming to work that day and preserving her employment. Her failure to come in late on November 6 is indicative of her disregard for the employer's standards. She already had a history of three or four unreported absences for which she had been verbally warned. The prior incidents represent unexcused absences as they were not properly reported. For the above reasons, the administrative law judge concludes that substantial misconduct has been established by the evidence. As such, benefits are denied.

Ms. Garrison has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code § 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated February 16, 2011, reference 01, is hereby reversed. Ms. Garrison was discharged by Casey's for disqualifying misconduct. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Garrison will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs