

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

KRISTY M MALINOWSKI  
510 – 2<sup>ND</sup> AVE NE  
INDEPENDENCE IA 50644

CASEY'S MARKETING COMPANY  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01534-CT  
OC: 01/03/05 R: 03  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kristy Malinowski filed an appeal from a representative's decision dated February 4, 2005, reference 01, which denied benefits based on her separation from Casey's Marketing Company. After due notice was issued, a hearing was held by telephone on February 28, 2005. Ms. Malinowski participated personally and offered additional testimony from Steve Risk. The employer responded to the notice of hearing but the designated witness was not available at the number provided at the scheduled time of the hearing. Two attempts were made to contact the employer's witness but there was no answer on either occasion. As of the date of the decision herein, the employer had not contacted the Appeals Section concerning the failure to participate.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Malinowski was employed by Casey's from June 18, 2002 until January 7, 2005. She was last employed full time as an assistant manager, a position she had held since July of 2002. She was discharged because of repeated tardiness in reporting to work.

Approximately two months before her discharge, Ms. Malinowski was about 20 minutes late for work and received a written warning. Approximately three weeks before the discharge, she was about 30 minutes late and received another warning. The final incident occurred on January 7. Ms. Malinowski was to be at work at 5:00 a.m. but did not awaken until approximately 7:00 a.m. When she awakened, she found an answering machine message from her manager, who had called at approximately 5:30 a.m. On January 6, Ms. Malinowski had worked from 4:00 a.m. until 3:00 p.m. As a result of her third incident of tardiness, Ms. Malinowski was discharged on January 7, 2005. At all times pertinent to this decision, Ms. Malinowski was responsible for making up the work schedule.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Malinowski was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 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. Malinowski was discharged because of repeated tardiness in reporting to work. She was at least 20 minutes late on two occasions before January 7 and had been warned about her tardiness. In spite of the warnings, she was over two hours late on January 7. The administrative law judge appreciates that she may have been working a lot of hours. However, she was off work from 3:00 p.m. on January 6 and was not scheduled to return until 5:00 a.m. the following day. Since she had 14 hours between shifts, the administrative law judge is not inclined to believe that her oversleeping on January 7 was the product of working too many hours the day before.

Ms. Malinowski was a member of management and, as such, was expected to set an example for those working under her. Her repeated tardiness had the potential of causing subordinates to believe that punctuality was not a requirement of the job. The administrative law judge considers an assistant manager's three periods of unexcused tardiness during a period of two months to be excessive. It is concluded, therefore, that Ms. Malinowski was discharged for excessive unexcused absenteeism and is disqualified from receiving benefits.

#### DECISION:

The representative's decision dated February 4, 2005, reference 01, is hereby affirmed. Ms. Malinowski was discharged for misconduct in connection with her employment. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she satisfies all other conditions of eligibility.

cfc/pjs