

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LA SHONDRA SHORTER
Claimant

APPEAL NO: 13A-UI-03211-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 02/10/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 14, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 16, 2013. The claimant participated in the hearing. Mary Bernauer, Store Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time kitchen helper/sometime cashier for Casey's Marketing from December 6, 2011 to February 7, 2013. She was discharged from employment due to a final incident of absenteeism that occurred on February 2, 2013.

Store Manager Mary Bernauer was on vacation until February 4, 2013. On January 26, 2013, the claimant called and stated she was sick and would not be in to work; on January 30, 2013, she called in and stated her car broke down and she would not be in to work; on February 1, 2013, she called in and reported her nephew was beaten up at school and his mother was out of town so she needed to pick him up and could not work that day; and on February 2, 2013, she called in and stated there was too much going on her life at that time and she could not work that day either. The assistant manager told her she was being taken off the schedule until such time as Ms. Bernauer returned from vacation and could discuss the claimant's attendance with her.

Ms. Bernauer returned from vacation February 4, 2013. The claimant called Ms. Bernauer February 5, 2013, at 9:00 a.m. to schedule a meeting later that day but failed to call or show up for the meeting. On February 6, 2013, the claimant called Ms. Bernauer and stated she would be in around 4:00 p.m. but Ms. Bernauer left at 4:00 p.m. and told the claimant to come in the following day. The parties finally met February 7, 2013, and the claimant told Ms. Bernauer that

her uncle was beaten up in prison February 2, 2013, and her mother had a heart attack as a result and that was why she could not work on that date. Ms. Bernauer told the claimant she violated the employer's attendance policy, which allowed two unexcused absences during a 12-month rolling calendar year, by accumulating four absences during one week. She explained the claimant's absences were considered excessive and terminated the claimant's employment. Ms. Bernauer talked to the claimant several times about her attendance but did not document verbal warnings and did not issue any written warnings to the claimant. The claimant was calling in so frequently and asking for so many days off Ms. Bernauer talked to her approximately one month before her termination and stated she needed to work more hours if she wanted to maintain her full-time employee status.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job misconduct.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The claimant accumulated four unexcused absences between January 26, 2013 and February 2, 2013, during which time Ms. Bernauer was off work on vacation. While the employer did not issue any formal verbal or written warnings to the claimant about her attendance, she did have several verbal counseling sessions with the claimant about her attendance. The claimant's final four absences were not excused absences and there is no evidence the absences were related to the claimant's personal illness. The final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Therefore, benefits must be denied.

DECISION:

The March 14, 2013, reference 01, decision is affirmed. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css