

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JENNIFER D CACERES**

Claimant

**APPEAL NO. 07A-UI-01976-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 01/07/07 R: 01  
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated February 16, 2007, reference 01, which allowed benefits based upon the claimant's separation from Casey's Marketing Company. Although notified the claimant did not participate. The employer participated by Ms. Amanda Carnes, Manager.

**ISSUE:**

At issue in this matter is whether the claimant was discharged for misconduct in connection with her work and whether the employer's appeal was timely.

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Casey's Marketing Company from August 4, 2006 until December 27, 2006 when she was discharged from employment. Ms. Caceres was employed as a part-time kitchen worker and was paid by the hour. The claimant was discharged from employment based upon a series of incidents that occurred between December 22 and December 24, 2006. On December 22, the claimant called indicating she would be late for work and subsequently called back to indicate that she would not be reporting. On December 23, the claimant called in again without securing a replacement and was informed at that time that the employer expected her to report for her scheduled work shift the following day, December 24, 2006. On December 24, the claimant again called in after the beginning time for her shift indicating that she would not be reporting due to transportation problems. The claimant had repeatedly been absent and had not properly notified the employer of her impending absence. A decision was made to terminate Ms. Caceres from her employment.

## REASONING AND CONCLUSIONS OF LAW:

Ms. Caceres was discharged from her employment based upon repeated failure to report for scheduled work. The claimant was aware that due to limited staffing her services were needed at the employer's facility; however, the claimant called in on two consecutive days indicating that she was unable to report because she had in effect absented herself from the geographic area and could not then return due to weather. On the second occasion the claimant had not secured a replacement as required. The claimant was discharged when she failed to report and did not provide proper notification on December 24, 2006, at that time indicating that she could not report because of transportation problems.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The administrative law judge concludes based upon the evidence in the record that the claimant failed to properly notify the employer of her impending absence on December 24, 2006 and that her absence was due to a matter of personal responsibility, providing transportation to and from the workplace, which was the claimant's obligation. The claimant previously had not secured a replacement as required and had chosen to absent herself from the geographic area although she knew that she was scheduled for work and that her services were needed due to short staffing. Based upon the evidence in the record the administrative law judge finds that the employer has sustained by a preponderance of the evidence the burden of proof in establishing that the claimant's separation took place under disqualifying conditions.

The employer failed to file its appeal within the 10-day time limit due to factors beyond its control, the inability of the U.S. Postal Service to deliver the notice of decision due to inclement weather. Good cause for late filing has been shown.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge holds that the claimant is overpaid unemployment insurance benefits in the amount of \$440.00 pursuant to Iowa law because a decision has determined the claimant is ineligible to receive benefits due to a discharge under disqualifying conditions.

**DECISION:**

The decision of the representative dated February 16, 2007, reference 01, is reversed. The claimant was discharged for misconduct. 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, providing she satisfies all other conditions of eligibility. The claimant is overpaid unemployment insurance benefits in the amount of \$440.00.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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