

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CRETIE I SAGE**  
Claimant

**APPEAL NO. 12A-UI-01573-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING CO**  
Employer

**OC: 01/01/12**  
**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Crettie Sage, filed an appeal from a decision dated January 30, 2012 reference 01. The decision disqualified claimant from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 5, 2012. The claimant participated on her own behalf. The employer, Casey's, participated by Manager Sally Sallee.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Crettie Sage was employed by Casey's from August 31, 2010 until December 23, 2011 as a full-time sandwich maker. She had received a written warning on April 9, 2011, for being 90 minutes late to work. Another warning was issued on October 29, 2011, because she had been no-call/no-show to work the day before. That warning did notify her that any further incidents would lead to discharge.

On December 22, 2011, the claimant was again a no-call/no-show to work due to lack of child care. She was scheduled to work at 6:00 a.m. and at any time could have called the store to ask for the manager's home phone because the donut makers were there at 3:00 a.m. Instead she called Ms. Sallee's cell phone even though she knew the manager did not answer her cell after 8:00 p.m. She made no attempt to call closer to 6:00 a.m. when her shift was scheduled to start and the manager would be in the store. On December 23, 2011, she was discharged by the manager for another no-call/no-show.

**REASONING AND CONCLUSIONS OF LAW:**

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.

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 claimant had been advised her job was in jeopardy as a result of her absenteeism. The final incident was a no-call/no-show due to lack of child care. Matters of purely personal consideration, such as lack of child care, are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct and the claimant is disqualified.

**DECISION:**

The representative's decision of January 30, 2012, reference 01, is affirmed. Crettie Sage is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs