

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAILEY E CASEY
Claimant

APPEAL NO. 12A-UI-02501-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YELLOWBOOK INC
Employer

OC: 01/15/12
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Yellowbook, filed an appeal from a decision dated March 2, 2012, reference 02. The decision allowed benefits to the claimant, Hailey Casey. After due notice was issued a hearing was held by telephone conference call on March 29, 2012. The claimant participated on her own behalf. The employer participated by Regional Human Resources Manager Steve Deyo.

ISSUE:

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

FINDINGS OF FACT:

Hailey Casey was employed by Yellowbook from September 13, 2010 until March 1, 2011 as a full-time telephone account representative. The employer's attendance policy calls for a first written warning when an employee has accumulated at least 20 hours of absenteeism after all paid time off has been used. A second and final written warning will be issued when another 20 hours has been accumulated after the first warning.

Ms. Casey was issued the first written warning on November 8, 2010 and the second and final warning on December 21, 2010. She was warned her job was in jeopardy if she missed any more work.

On March 1, 2011, the claimant called in absent for work because her five-year-old daughter was ill. Supervisor Morgan Hames told her she was going to be discharged if she did not come in to work. Ms. Casey said she was unable to find any other child care for her daughter and would not be in. The supervisor then told her she was discharged but would be allowed to resign "officially" so the discharge would not occur on her record. Ms. Casey took that option.

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 was discharged for excessive, unexcused absenteeism. Her final absence was due to the illness of a minor child too young to care for herself. She properly reported the absence but as no absences are excused by the employer it was counted against her for purposes of the absenteeism policy and she was discharged. A properly reported illness cannot be considered misconduct as it is not volitional. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). As there was no final, current act of misconduct as required by 871 IAC 24.32(8), disqualification may not be imposed.

DECISION:

The representative's decision of March 2, 2012, reference 02, is affirmed. Hailey Casey is qualified for benefits, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs