

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBIE OVERTON
Claimant

APPEAL NO: 17A-UI-01531-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 01/15/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 6, 2017, 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 March 2, 2017. The claimant participated in the hearing. Kathy Brown, 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 clerk for Casey's from October 31, 2011 to December 15, 2016. She was discharged from employment when she was unable to return to work following an extended medical leave.

The claimant suffered a non-work related injury June 27, 2016, and was on FMLA until it was exhausted September 19, 2016. She maintained contact with the employer during her leave and provided her doctor's notes to the store manager following each doctor appointment. The store manager wanted to keep the claimant as an employee and requested the employer hold a position for the claimant until she was released to return to work without restrictions. Consequently, her leave was extended following each doctor's note the claimant provided until December 15, 2016, at which time Leave Specialist Melinda Karl called the claimant and told her the employer was "going to have to separate her as it no longer had a job for her but she could reapply for any future openings." At that point the claimant believed her employment was terminated.

The claimant was attending vocational rehabilitation and was told by someone there she should take her final doctor's note that released her without restrictions effective January 5, 2017, to the employer to complete her responsibilities to the employer. On January 19, 2017, the claimant dropped off the note at the store. The store manager did not look at the note and the claimant asked her if she had heard anything from corporate. The store manager had not and

the claimant jokingly mentioned it would be nice if she could get her old job and hours back when she worked weekdays only. The store manager told her every employee had to work at least every other weekend and then her phone rang and she went to the office to answer it. She was occupied for several minutes and the claimant left the store. The parties have not spoken to each other since January 19, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant was off work on the advice of her treating physician from June 27 through December 15, 2016, due to a severe leg injury. While the employer extended her medical leave because the store manager hoped to keep the claimant as an employee, the corporate leave specialist contacted the claimant December 15, 2016, and terminated her employment. The claimant had not been released to return to work by that date but did receive a full release to return to work effective January 5, 2017. Because the final absence was related to properly reported illness/injury, no final or current incident of unexcused absenteeism has been established. Therefore, benefits are allowed.

DECISION:

The February 6, 2017, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs