

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALICIA M WORTH
Claimant

APPEAL NO: 12A-UI-09406-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/01/12
Claimant: Respondent (2-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absences
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 25, 2012, reference 01, that held the claimant was not discharged for misconduct on July 2, 2012, and which allowed benefits. A telephone hearing was held on August 30, 2012. The claimant participated. Sonja Gosse, store manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment on September 9, 2010, and last worked for the employer as a part-time pizza cook/cashier on June 26, 2012. He received the employer's policies in an employee handbook. The policy provides that two or more unscheduled absences may result in employment termination.

Claimant was scheduled to work on Friday, June 29, and Saturday, June 30. She learned that evening her attempt to find a replacement for these days had fallen through. She asked another employee to write a note that she would be absent from work. Although claimant had been out of town, she had returned to Oelwein on her scheduled work days. She made no attempt to call the assistant manager on duty or report her absences. The assistant manager did not get any note for the claimant and had to work her shifts.

Claimant called the store manager on the evening of July 2 to see if she had a job. The store manager told her she was terminated for her no-call, no-show to work on June 29/30.

Claimant has received benefits on her unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on July 2, 2012 for unexcused absences.

The employer's policy provides that two or more unexcused absences can lead to employment termination. Claimant knew her attempt to find a replacement worker for her weekend shift had failed, and she could have reported to work and/or called in absences but failed to do so. These absences constitute job-disqualifying misconduct.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since claimant has been now disqualified after receiving benefits, the overpayment issue is remanded to Claims for a decision.

DECISION:

The department decision dated July 25, 2012, reference 01, is reversed. The claimant was discharged for misconduct on July 2, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw