

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KANDY J ROCKWELL
2403 S TAFT
APT 2
MASON CITY IA 50401

CASEYS MARKETING CO
TALX UCM SERVICES INC
3455 MILL RUN DR
HILLIARD OH 43026

Appeal Number: 04A-UI-09376-H2T
OC: 08-01-04 R: 02
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 24, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 23, 2004. The claimant did participate. The employer did participate through Donna Fischbeck, Store Manager. Claimant's Exhibit A was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a baker and pizza maker full time beginning August 22, 2003 through June 28, 2004 when she was discharged. The claimant was a no call-no show to work

on June 28, 2004. The claimant had previously missed work on June 1, and June 5, when she called in sick. The claimant was late to work on both June 18, and June 25. On June 25, 2004 the claimant was verbally warned about her tardiness and was told by Ms. Fischbeck that she needed to be on time to work. Ms. Fischbeck never told the claimant that she would be terminated if she had one more instance of absenteeism or tardiness.

On June 28 the claimant's boyfriend went into the Casey's store and told Ms. Fischbeck that the claimant was absent from work. He did not mention that the claimant was sick. The claimant did not see a doctor on June 28. The claimant went into the store at 2:00 p.m. and was told by Ms. Fischbeck that she was discharged for missing work that day. The claimant did not present a doctor's note to Ms. Fischbeck until over one month later on July 23. The doctor's note, Claimant's Exhibit A, does not specifically excuse the claimant from work on June 28.

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 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.

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 claimant has not established that she was absent from work on June 28, 2004 due to illness. The claimant did not call in to report her absence due to illness and when her boyfriend went into the store he did not tell Ms. Fischbeck that she was too ill to come to work. In fact, the claimant was able to come into the store to talk with Ms. Fischbeck at 2:00 p.m. that same day. The claimant's doctor's note obtained over one month after her termination does not excuse her from work on June 28 and the claimant's testimony was that she did not seek medical treatment on June 28. However, the claimant was entitled to fair warning that the employer was no longer going to tolerate her performance and conduct, that is, her continued tardiness or unexcused absenteeism. Without fair warning the claimant had no way of knowing that there were changes she needed to make in order to preserve her employment. Since the claimant did not receive a final warning, it is concluded that she is not disqualified from receiving unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The August 24, 2004, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/tjc