

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

MACKENZIE J CARTER
Claimant

APPEAL NO. 18A-UI-06070-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/22/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's May 21, 2018, decision (reference 02) that concluded Mackenzie Carter (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 18, 2018. The claimant participated personally. The employer participated by Aime Edwards, Store Manager, and Leslie Blakney, Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 1, 2017, as a part-time cashier but she worked full-time hours. The employer has a handbook but it is unknown whether the claimant received it. The store manager told the claimant that texting the store manager was not a proper way to report an absence. On December 28, 2017, and February 9, 2018, the employer issued the claimant written warnings for tardiness. The employer considered the claimant's absence on December 28, 2017, as an absence without report because she was very late. The employer notified the claimant each time that further infractions could result in termination from employment.

On March 25, 2018, the claimant became ill and left work early. On April 1, 2018, the claimant sent the store manager a text stating she was going to the emergency room. The two sent texts back and forth. On April 1, 2018, the claimant told the store manager that the hospital was keeping her overnight because she was dehydrated. The claimant was next sent to the hospital in Iowa City, Iowa. On April 2, 2018, the claimant explained to the employer that the hospital would not let her call out. She was hooked up to medical equipment and could not leave the hospital. The claimant had no choice but to text. The claimant asked the store manager if she needed to get a replacement for her 4:43 a.m. shift on April 3, 2018. At 4:55 p.m. on April 2,

2018, the store manager told the claimant to let her know what the hospital said. At 9:00 p.m. on April 2, 2018, the claimant sent a text to the store manager saying the hospital would let her leave on April 3, 2018, if she could keep fluids down.

At 11:30 a.m. on April 3, 2018, the hospital released the claimant and she went home. On April 3, 2018, the store manager prepared discharge papers. The employer terminated the claimant for failure to appear for work at 4:43 a.m. on April 3, 2018, without properly reporting her absence by telephone call. The store manager signed the discharge papers on April 3, 2018, and took the claimant off the schedule. The claimant called the store manager when she was released but the store manager did not answer her telephone. She called the store where she worked but she was told the store manager was busy. On April 4, 2018, the store manager added information to the discharge paperwork about the claimant not appearing for her April 4, 2018, shift without notice.

The claimant filed for unemployment insurance benefits with an effective date of April 22, 2018. The employer provided the name and number of Tyrone Stokes as the person who would participate in the fact-finding interview on May 18, 2018. The fact finder called Mr. Stokes but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. *Roberts v. Iowa Department of Job Service*, 356 N.W.2d 218 (Iowa 1984). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was an improperly reported illness. The claimant's absence does not amount to job misconduct because the claimant could not properly report her absence due to physical incapacity. The claimant was not able to use the telephone while in the hospital or leave the hospital. She was able to text and the employer knew she was in the hospital. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's May 21, 2018, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs