

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MISTY S ANGLIN**

Claimant

**APPEAL NO. 10A-UI-07887-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S GENERAL STORES**

Employer

**OC: 01/10/10**

**Claimant: Respondent (2/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's May 21, 2010 decision (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on July 19, 2010. The claimant did not respond to the hearing notice or participate in the hearing. Diane Ausenkamp, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 19, 2010. The employer hired the claimant to work as a part-time cook. The employer's policy informs employees that if they have two incidents of failing to call or report to work as scheduled, the employer may end the employment.

On April 8, there was a mandatory store meeting at 2 p.m. The meeting time and date were posted so employees knew about the meeting. The claimant was not scheduled to work on April 8. The claimant did not attend the mandatory meeting. After the claimant talked to a co-worker, she left a note for the employer indicating she had forgotten about the April 8 meeting. The claimant's note indicated she understood she would receive a write up for missing the meeting.

On April 20, 2010, the claimant called the employer and reported she was ill and unable to work that day but would be at work the next day. The employer planned to give the claimant a written warning on April 20 for missing the April 8 meeting. (Ausenkamp had been sick after April 8 when the claimant worked.) When the claimant did not report to work on April 21, employees contacted Ausenkamp at 4:30 a.m. to let her know the claimant was not at work. At 5:00 a.m., Ausenkamp called the claimant's contact numbers. At the first number, a male

answered and indicated he did not know where the claimant was. The second phone number indicated that the phone number was not receiving calls. The claimant did not call or report to work on April 21 or 22.

The claimant talked to the full-time cook on April 22. The cook told the claimant she needed to contact Ausenkamp and gave the phone number. On April 23, after she was scheduled to work, the claimant talked to Ausenkamp. While talking to Ausenkamp, the claimant changed her story about her health and why she had or had not called the employer. The employer learned the first time the claimant went to a doctor that week was 5 p.m. on April 23. On April 26, the claimant gave the employer a doctor's statement dated April 23. The statement indicated the claimant could return to work on April 25.

The employer discharged the claimant because she had not called or reported to work as scheduled on April 21, 22, or 23. The employer concluded the claimant violated the employer's attendance policy.

The claimant established a claim for benefits during the week of January 10, 2010. She reopened her claim the week of April 25, 2010. She has filed for and received benefits since April 25.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

Based on the evidence presented during the hearing, the claimant's failure to contact the employer on April 21, 22, and 23 to properly report she was unable to work amounts to a substantial disregard of the employer's interests. Even though the claimant went to a doctor on April 23, she did not establish she was ill or unable to work during the three days at issue. The employer established that the claimant was discharged for reasons constituting work-connected misconduct. As of April 25, 2010, the claimant is not qualified to receive benefits.

Since the claimant has received benefits after she reopened her claim, the issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section to determine.

**DECISION:**

The representative's May 21, 2010 decision (reference 02) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 25, 2010. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw