

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE M MCADAMS**

Claimant

**APPEAL NO: 15A-UI-06525-LDT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 10/12/14**

**Claimant: Respondent (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's May 28, 2015 decision (reference 05) that concluded Stephanie M. McAdams (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 16, 2015. The claimant received the hearing notice and responded by contacting the Appeals Bureau on June 15, 2015 and registering a specified telephone number into the Bureau's conference call system. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, the claimant did not participate in the hearing. Jennifer Martinez 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:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently started working for the employer on February 2, 2015. She worked part time (about 28 hours per week) as a store employee/cashier at the employer's Council Bluffs, Iowa store. Her last day of work was April 30, 2015. The employer discharged her on May 4, 2015. The reason asserted for the discharge was excessive absenteeism.

The employer requires employees who are going to be absent to provide at least two hours' notice prior to the start of the scheduled shift. The claimant had had several absences since returning to the employer, including about six or seven prior to March 30 when she was given a final written warning. She was then absent again on April 24, when she called only 30 minutes prior to the scheduled shift.

The final occurrence was on May 1 when she was scheduled to work a shift beginning at 4:00 p.m. At about 11:00 a.m. she called indicating that she had drank too many energy drinks

and was shaky, and was going to try to find someone to cover the shift, but assuring the employer that if she could not find anyone, she would be there for the shift. The employer heard nothing further from the claimant until 5:30 p.m., an hour and a half after the scheduled start time for the shift, when she sent a text indicating that she was not well enough to come in. As a result of this further incident, the employer discharged the claimant on May 4.

The claimant established a claim for unemployment insurance benefits effective October 12, 2014. She reactivated the claim by filing an additional claim effective May 10, 2015. The claimant has received no unemployment insurance benefits since the separation from employment.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Excessive unexcused absenteeism can constitute misconduct. Rule 871 IAC 24.32(7). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional. *Cosper*, supra. However, the claimed illness-related absence in this matter was not properly reported, nor was an acceptable reason provided to excuse the failure to properly report the absence. The claimant's final absence was not excused and was not due to illness or other reasonable grounds. The claimant had previously been warned that future absences could result in termination. *Higgins v. IDJS*, 350 N.W.2d 187 (Iowa 1984). The employer discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's May 28, 2015 decision (reference 05) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of May 4, 2015. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs