

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINERVA SOTO

Claimant

APPEAL NO. 15A-UI-09796-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 07/19/15

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's August 21, 2015, decision (reference 03) that concluded Minerva Soto (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 September 16, 2015. The claimant participated personally. The employer participated by Kristi Howard, Store Manager; Amber Mills, First Assistant; and Alisha Weber, Unemployment Insurance Consultant. The employer offered and Exhibit One 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 16, 2014, as a part-time store employee. The claimant signed for receipt of the employer's handbook on September 16, 2014. The handbook states that an employee will be considered to have quit if she fails to appear for work without notice twice.

The store manager posts a two-week schedule in her office. The claimant looked at the handwritten schedule and saw she was not scheduled to work on May 10, 2015. On May 11, 2015, the employer issued the claimant a written warning when the claimant did not give notice and did not appear for work on May 10, 2015. The employer was short-handed and posted a printed schedule showing the claimant as working on May 10, 2015. The claimant did not see the printed schedule.

The handwritten two-week schedule the store manager posted in her office showed the claimant did not work on July 20, 21, 22, and 23, 2015. There was a printed schedule posted without complete information. On July 23, 2015, the claimant called the employer to see when she worked on July 24, 2015, the employer told her she was removed from the schedule when she did not appear for work or notify the employer of her absence on July 23, 2015.

The claimant filed for unemployment insurance benefits with an effective date of July 19, 2015. The employer participated personally at the fact-finding interview on August 20, 2015, by Alisha Weber.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer changed the claimant's schedule from a non-work day to a work day twice. When the claimant did not appear for work, the employer

said she did not appear for work and did not report her absence. The employer created the circumstances for which the claimant was terminated. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 21, 2015, decision (reference 03) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs