

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIA M GUIDER
Claimant

APPEAL NO. 13A-UI-14238-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 11/03/13
Claimant: Respondent (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's December 19, 2013, decision (reference 01) that concluded Julia Guider (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 21, 2014. The claimant participated personally. The employer participated by Graeme Eldeen, Store, Manager, and Alisha Weber, Unemployment Insurance Consultant.

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 May 4, 2012, as a part-time cook. The claimant signed she had read the employer's handbook on May 4, 2012. On July 10, 2012, the employer issued the claimant a verbal warning for failure to appear for a shift or notify the employer of her absence. The claimant did not check the schedule and did not know she was scheduled to work that shift. The employer notified the claimant that further infractions could result in termination from employment. On October 27, 2013, the employer issued the claimant a written warning for failure to attend a mandatory meeting. The claimant did not give notice of her absence. The claimant did not check the schedule and did not know she was scheduled to work that shift. The employer notified the claimant that further infractions could result in termination from employment.

On October 28, 2013, the claimant notified the employer she would not be working because she did not have transportation. The employer told the claimant it would supply the claimant with a ride as it had since September 2013. The claimant refused because she thought she was imposing. On October 29, 2013, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of November 3, 2013. She received no benefits after the separation from employment. The employer participated personally at the fact-finding interview on December 18, 2013, by Alisha Weber.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of unexcused absenteeism, is considered excessive. Benefits are withheld.

DECISION:

The representative's December 19, 2013, decision (reference 01) is reversed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant received no unemployment insurance benefits.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs