

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBIN M WENTHOLD
Claimant

APPEAL NO. 11O-UI-08058-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 01/23/11
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Robin M. Wenthold filed a timely appeal from an unemployment insurance decision dated March 4, 2011, reference 01, that disqualified her for benefits. Believing erroneously that the claimant had intended to withdraw the appeal, an administrative law judge issued a withdrawal decision on April 8, 2011 in Appeal #11A-UI-03186-NT. The claimant filed an appeal with the Employment Appeal Board which, in a remand order dated June 17, 2011, returned the case to the Unemployment Insurance Appeals Bureau for further proceedings. After due notice was issued, a telephone hearing was held September 12, 2011 with Store Manager Jennifer Kulish participating for the employer. Ms. Wenthold did not provide a telephone number at which she could be contacted.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Robin M. Wenthold was employed as a cook by Casey's General Stores from August 3, 2010 until she was discharged January 25, 2011. The final incident leading to the discharge was Ms. Wenthold's absence without contact on January 24, 2011. She had received a written corrective action on November 30, 2010 after arriving one hour and 43 minutes late for her 4:00 a.m. shift that day. Ms. Wenthold had received other verbal warnings about attendance and other corrective actions for other matters. The decision to discharge was based on her attendance.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with her employment. It does.

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.

871 IAC 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.

Excessive unexcused absenteeism, a concept that includes tardiness, is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The evidence in the record establishes that the claimant received a warning after being tardy on November 30, 2010 and was discharged after being absent without contact on January 24, 2011. Absent evidence of mitigating circumstances, the administrative law judge concludes that this evidence is sufficient to establish excessive unexcused absenteeism. Benefits are withheld.

DECISION:

The unemployment insurance decision dated March 4, 2011, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs