

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBRA M THOMAS

Claimant

APPEAL NO. 09A-UI-15124-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/07/08

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Casey's, filed an appeal from a decision dated September 2, 2009, reference 02. The decision allowed benefits to the claimant, Debra Thomas. After due notice was issued, a hearing was held by telephone conference call on November 9, 2009. The claimant participated on her own behalf and with witness, Lori Sly. The employer participated by Manager Kim Maxheimer.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Debra Thomas was employed by Casey's from April 29, 2009 until August 5, 2009 as a part-time cook. On August 3, 2009, she attended a non-family funeral an hour away from her workplace. She did not notify the employer on August 2, 2009, when she first learned of the date and time of the funeral, but stopped by the store on the way out of town to tell Manager Kim Maxheimer where she was going. Ms. Thomas was scheduled to work at 4:00 p.m. and the funeral concluded around 1:00 p.m. After the funeral the deceased's family asked Ms. Thomas to come to their home, which she did. During that visit she consumed alcohol and did not feel she should drive. Around 2:00 p.m. she called the manager to say she would not be in after all.

The manager reminded the claimant of the policy which required her to find her own replacement and Ms. Maxheimer provided the names and phone numbers of other employees. Shortly after that the claimant called back and said she could not find anyone to work for her. She hung up and was no-call/no-show to work.

On August 4, 2009, Ms. Thomas was scheduled to work at noon. Around 2:00 p.m. she came into the store and told Assistant Manager Lori Sly she did not know she was supposed to work that day although her name was on the schedule and had been since it was posted. The manager was notified and discharged in writing, which she received the next day.

Debra Thomas has received unemployment benefits since filing a claim with an effective date of September 7, 2009.

REASONING AND CONCLUSIONS OF LAW:

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(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.

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 claimant missed two consecutive days of work, being no-call/no-show on each of them. The absences were both for matters purely within her control. She could have attended the friend's funeral and visited with the family and still been able to work her scheduled shift had she not elected to consume enough alcohol to render her unable to drive. Additionally, she could have started making arrangements to find a replacement, or request the day off, 24 hours prior to the funeral when she first learned when it was scheduled. These are all options she elected not to take and instead simply did not come to work even after being told by the manager she needed to work herself if she could not find a replacement.

For the next day she missed, could have read the schedule more closely and noted the days and hours she was to work. Showing up at the store two hours after the scheduled start time on August 4, 2009, and telling the assistant manager she did not know she was to work that day does not constitute an excused or even a properly reported absence.

The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 2, 2009, reference 02, is reversed. Debra Thomas is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css