

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUNNY D BARTON**

Claimant

**APPEAL NO. 12A-UI-09848-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 10/02/11**

**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 6, 2012 decision (reference 05) that concluded Sunny Barton (claimant) 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 6, 2012. The claimant participated personally. The employer participated by Tricia Johnson, store manager.

**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 having considered all of the evidence in the record, finds that: The claimant was hired on March 16, 2012, as a part-time cashier/cook. The claimant signed for receipt of the employer's handbook on March 16, 2012. The employer did not issue the claimant any warnings during her employment.

On May 25, 2012, the claimant properly reported illness and left work two hours early. The employer and a co-worker gave out personal information to the claimant's babysitter that caused the babysitter to quit on May 25, 2012. The claimant could not find a babysitter for the Memorial Day weekend.

On May 26 and 27, 2012, the claimant properly notified the employer that she would not be at work due to her lack of babysitter. The employer told the claimant she had to show up or find a replacement. The claimant could do neither but assumed she had properly reported her absence. On May 28, 2012, the claimant had a babysitter and called the employer to make certain she still had a job. The employer told her she was a no-call, no-show for May 26 and 27, 2012, and could no longer work for the employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not 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 not established that the claimant was warned that further unexcused absences could result in termination of employment. The claimant properly reported her absences because of lack of a babysitter. The lack of a babysitter was caused by the employer's divulgence of the claimant's personal information. 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.

The claimant's and the employer's testimony is conflicting. The administrative law judge finds the claimant's testimony to be more credible because she was an eyewitness to the events for which she was terminated. The employer's testimony was inconsistent. It testified that the claimant never called the employer to report absences and then testified to the times the claimant called.

**DECISION:**

The representative's August 6, 2012 decision (reference 05) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/kjw