

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY L DECKER

Claimant

CASEY'S MARKETING COMPANY

Employer

APPEAL NO. 09A-UI-17724-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/25/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(7) – Excessive Unexcused Absenteeism
871 IAC 24.32(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated November 17, 2009, reference 01, that held the claimant was not discharged for misconduct on September 1, 2009, and benefits are allowed. A telephone hearing was held on December 17, 2009. The claimant participated. Toni Roher, Store Manager, participated for the employer.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked as a part-time cashier from September 29, 2008 to September 1, 2009. The claimant was disciplined with a written warning in November 2008 for excessive absences.

The claimant called in sick for September 2 and 3, 2009, and at the request of her manager, provided a doctor's excuse to cover the absences. The claimant called in sick for September 5 and went to the emergency room for treatment on September 6. The claimant provided a doctor's work release to the employer for her illness that was diagnosed as bronchitis.

Store Manager Rohrer was on vacation from September 5 to 13. The claimant called in sick on the days she was scheduled to work during this period. The claimant called in sick on September 16 and 17 when she spoke with Rohrer. Rohrer advised she was taking the claimant off the work schedule until she provided doctor excuses to cover her absences due to illness. The claimant was never issued any written notice that she provides the excuses by a certain date or she would be terminated. When Rohrer did not receive the requested information, she terminated the claimant without notification on September 25, 2009.

The employer representative faxed documents to Unemployment Appeals on September 25 with the statement they were provided to the claimant. The claimant did not receive them, and they were not considered as evidence due to untimely submission.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 administrative law judge concludes that the employer failed to establish misconduct/current acts of misconduct in the discharge of the claimant on September 25, 2009, for excessive "unexcused" absenteeism.

The claimant established her illness with medical documentation provided to the employer at its outset during the first week of September. The illness was serious enough to warrant an emergency room visit on September 6. Since the manager was gone from September 5 to the September 13, the best evidence is claimant continuing to call in absences due to illness through the September 16. When the manager notified the claimant on the 17th she was being taken off the work schedule, this effected a termination from employment though it was not documented as a discharge until the September 25. The condition she provide medical excuses was in order to get her job back, as she had been terminated. Roher acknowledges the claimant did not know about her termination, and it could have been sent to her by mail. There is no written employer demand the claimant provide medical documentation by a certain date or be terminated.

While the employer policy/manager discretion may demand doctor excuses, the claimant established with medical documentation she was suffering from a serious illness, and properly reported her missing work for illness that is not "unexcused" absenteeism.

DECISION:

The decision of the representative dated November 17, 2009, reference 01, is affirmed. The claimant was not discharged for misconduct in connection with employment on September 17, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css