

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDWARD J WHEELER  
503 – 2<sup>ND</sup> ST  
KELLOGG IA 50135**

**APPEAL NO. 09A-EUCU-00474-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

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**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDWARD J WHEELER**

Claimant

**APPEAL NO. 09A-EUCU-00474-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/11/07**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Edward Wheeler filed an appeal from a representative's decision dated November 3, 2009, reference 07, which denied benefits based upon his separation from Casey's Marketing Company. After due notice was issued, a hearing was held by telephone on February 4, 2010. The claimant participated personally. The employer indicated that it would not be participating.

**ISSUE:**

At issue in this matter is whether the appeal filed herein was timely and whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Edward Wheeler's appeal in this matter was delayed because his notice of a fact-finder's decision was misdirected by the U.S. Postal Service. The claimant filed an appeal immediately upon receiving the fact-finder's decision late. Good cause for a late filing has been shown.

Mr. Wheeler was employed as a part-time cashier for Casey's Marketing Company from January 6, 2009 until March 6, 2009 when he was discharged from employment. Mr. Wheeler had been absent from work on a number of occasions due to medical issues. The claimant had attempted to provide advance notice to the employer and request time off in advance of the scheduled dates. When the claimant was absent on days that he was scheduled to work Mr. Wheeler provided a doctor's note verifying his absence was due to medical reasons. The claimant provided required notice to the employer per company policy.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge finds the claimant's discharge took place under nondisqualifying reasons.

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.

The employer bears the burden of proof in this matter. See Iowa Code section 96.6.2.

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes that when absent Mr. Wheeler provided required notification to the employer in advance of his impending absence. The evidence further establishes that Mr. Wheeler supplied medical documentation supporting his need to be absent for all attendance infractions. The claimant's last attendance infraction was due to factors beyond his control.

Based upon the facts of this case and the application of the law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated November 3, 2009, reference 07, is hereby reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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