

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARYSSA ZAMARRON**  
Claimant

**CASEY'S MARKETING COMPANY**  
Employer

**APPEAL 20A-UI-09149-HP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/24/20  
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2) – Discharge Due to Misconduct

**STATEMENT OF THE CASE:**

Claimant Maryssa Zamarron filed an appeal from a July 27, 2020 (reference 01) unemployment insurance decision that denied benefits based upon her discharge from employment with Casey's Marketing Company ("Casey's"). Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for September 15, 2020. Zamarron appeared and testified. No one appeared on behalf of Casey's. I took administrative notice of the claimant's unemployment insurance benefits records maintained by Iowa Workforce Development.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

Zamarron commenced employment as a cashier with Casey's in November 2019. Casey's moved her to a cashier/kitchen prep position. Her immediate supervisor was Anita.

On March 21, 2020, after work, Zamarron cut her foot on glass at her apartment building when she fell. Zamarron contacted Anita and told her she needed to go the doctor and that she would not be able to work the next day. Anita told her she needed to find her own replacement and sent her the schedule and the list of the telephone numbers of the employees. Zamarron testified employees were working double shifts at that time and she told Anita she could not find a replacement. Anita told her she needed to come to work.

The next day, on March 22, 2020, Zamarron went to the doctor. She received stitches in her heel and could not wear a shoe. The doctor issued Zamarron a note, releasing her to return to work that day. Zamarron was scheduled to work at 4:00 p.m.

Zamarron contacted Anita and told her she had been to the doctor and received a doctor's note. Anita asked when she could return to work. Zamarron replied that day. Zamarron asked when

she could return to work and Anita told her all of the hours had changed. She did not tell Zamarron to come to work. Anita then blocked Zamarron from the employee Facebook page.

Zamarron reported a coworker told her she had been terminated. Zamarron never heard back from Anita.

Zamarron testified she had not been disciplined for missing work in the past. Zamarron reported Anita did not tell her she had been discharged or that she had violated a company rule. Zamarron testified she did not have problems missing work.

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

Under Iowa Code section 96.5(2)a,

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . .

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 disqualification shall continue 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 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

*Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 Iowa Administrative Code 24.32(8) also provides:

*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.

The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits; such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

871 Iowa Administrative Code 24.32(7), provides, "[e]xcessive 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 Supreme Court has held 871 Iowa Administrative Code 24.32(7) accurately states the law. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984)


Excessive absences are not considered misconduct unless unexcused. *Cosper*, 321 N.W.2d at 10. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to and including discharge for the absence under its attendance policy. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007)

The determination of whether unexcused absenteeism is excessive requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192. The absences must also be unexcused. *Cosper*, 321 N.W.2d at 10. An absence can be unexcused if it did not constitute reasonable grounds or if it was not properly reported. *Id.*; *Higgins*, 350 N.W.2d at 191. Excused absences are those with "appropriate notice." *Cosper*, 321 N.W.2d at 10. Absences in good faith, for good cause, and with appropriate notice are not misconduct. *Id.* Such absences may be grounds for discharge, but not for disqualification of benefits because substantial disregard for the employer's interest has not been shown and this is essential for a finding of misconduct. *Id.*

Zamarron contacted her supervisor when she cut her foot on March 21, 2020 and told her she could not come to work the next day at 4:00 p.m. Her supervisor told her she needed to find her own replacement. Zamarron could not find her own replacement. The next day she went to the doctor and she received stitches in her heel. The doctor released her to return to work that day. Zamarron contacted her supervisor and told her she had been released to return to work that day. Zamarron's supervisor told her the schedule had changed. She then blocked Zamarron from the employee Facebook page. Zamarron learned from a coworker she had been terminated. Zamarron reported her supervisor did not tell her she had been discharged or that she had violated a company rule. Zamarron did not have a previous history of absences or discipline. I find Casey's has failed to prove Zamarron was discharged for any current act of job-related misconduct that would disqualify her from receiving unemployment benefits. Benefits are allowed.

**DECISION:**

The July 27, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed. The employer has not established the claimant was discharged for misconduct for a disqualifying reason. Benefits are allowed provided the claimant is otherwise eligible.



Heather L. Palmer  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

September 16, 2020  
Decision Dated and Mailed

hlp/scn