

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHELSEA ELDEEN**  
Claimant

**APPEAL NO: 13A-UI-08349-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 06/16/13**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.6-2 - Timeliness of Appeal

**STATEMENT OF THE CASE:**

Chelsea Eldeen (claimant) appealed an unemployment insurance decision dated July 5, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Casey's Marketing Company (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 21, 2013. The claimant participated in the hearing. The employer participated through Store Manager Stephanie Spivey. Exhibit D-1 and Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the claimant's appeal is timely, and if so, whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A disqualification decision was mailed to the claimant's last-known address of record on July 5, 2013. The claimant did not receive the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by July 15, 2013. The appeal was not filed until July 17, 2013, which is after the date noticed on the disqualification decision. The claimant filed an appeal after calling Iowa Workforce Development and learning that she had been disqualified for benefits.

The claimant was employed as a full-time clerk/cashier from January 12, 2013 through June 10, 2013 when she was considered to have voluntarily quit after three days of no-call/no-show. The employer's policy considers an employee to have voluntarily quit after two days of no-call/no-show. The claimant last worked on June 6, 2013 and was a no-call/no-show on June 6, 7, and 8, 2013. She testified she could not work due to medical problems.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The claimant did not receive the decision within the ten-day time period allowed for the appeal. She did file an appeal immediately upon receiving information she had been disqualified. Therefore, the appeal shall be accepted as timely.

The substantive issue to be determined in this case is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or report to work for three consecutive workdays in violation of company policy.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. The law presumes it is a quit without good cause attributable to the employer when an employee is absent for three days without notification in violation of company rule. 871 IAC 24.25(4). The claimant has not met her burden and the separation was not attributable to the employer.

In the alternative, the separation could also be characterized as a discharge, in which case, the employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The claimant had received two previous warnings for attendance and while her absences may have been due to illness, they were not reported to the employer. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer has established the claimant had excessive unexcused absenteeism even after being warned. Work-connected misconduct as defined by the unemployment insurance law has also been established in this case. Benefits are denied.

## DECISION:

The claimant's appeal is timely. The unemployment insurance decision dated July 5, 2013, reference 01, is affirmed. The claimant's separation is disqualifying. Benefits are withheld until

she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

---

Susan D. Ackerman  
Administrative Law Judge

---

Decision Dated and Mailed

sda/css