

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEPHANIE DANIELS**

Claimant

**APPEAL NO: 11A-EUCU-00626-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 08-22-10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 21, 2011, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 24, 2011. The claimant participated in the hearing. Karla Fenske, Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time cashier and kitchen help for Casey's General Stores from November 30, 2010 to June 20, 2011. She was discharged for excessive unexcused absenteeism. The claimant was absent because she did not have childcare June 8, 2011. She was scheduled to come in and clean after asking for more hours and when she notified the employer she could not come in she was told not to worry about it. The claimant was scheduled to start her shift at 4:00 p.m. June 9, 2011. She called the employer 45 minutes prior to her shift and told the manager she would be about 15 minutes late because she had to go to the police station at 3:00 p.m. and provide a statement regarding counterfeit bills passed at the store. The claimant was both a witness and a suspect but was cleared in the matter. The interview lasted longer than she anticipated so she called the employer back to inform it she would be later than expected and arrived 45 minutes after the scheduled start of her shift. On June 10, 2011, the employer issued the claimant a written warning for her attendance and tardiness. On June 18, 2011, the claimant was scheduled to work but went to the emergency room because of a severe migraine and was hospitalized overnight. A male nurse called the employer for her approximately 45 minutes before the start of her shift and stated she was in the emergency room and would not be at work that day. The employer tried to call her back to tell her she needed to find a replacement to work her shift but the claimant's cell phone went straight to voice mail because the hospital personnel told her to turn it off as she was being monitored by a heart machine. The claimant was not scheduled June 19, 2011, and the employer called her

prior to her shift June 20, 2011, and notified her by voice mail that her employment was terminated. The claimant had other previous absences but the employer could not provide the dates of those absences or incidents of tardiness.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's only documented absences or incidents of tardiness provided by the employer occurred June 8, 9 and 18, 2011. While the June 8, 2011, absence due to a lack of childcare was not excused, the June 9, 2011, incident of tardiness when she was at the police station was work-related and beyond the claimant's control. The June 18, 2011, absence was due to properly reported illness as the claimant was in the emergency room, and eventually hospitalized for the night, due to a migraine and a male nurse called the employer to notify it of her absence, and that incident is considered excused under Iowa unemployment law. Given that the employer could not provide any additional dates of absenteeism, the administrative law judge must conclude that the final absence was related to properly reported illness, and no final or current incident of unexcused or excessive unexcused absenteeism has been established. Therefore, benefits are allowed.

**DECISION:**

The July 21, 2011, reference 02, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs