

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JANINE K LOGSDON
2411 W 68TH ST
DAVENPORT IA 52806

CASEYS GENERAL STORE
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05O-UI-01041-HT
OC: 10/10/04 R: 04
Claimant: Appellant (4)

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 the **Employment Appeal Board, 4th 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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Quit
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Janine Logsdon, filed an appeal from a decision dated November 12, 2004, reference 05. The decision disqualified her from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 15, 2005. The claimant participated on her own behalf. The employer, Casey's, participated by Manager Sue McCoy.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Janine Logsdon was employed by Casey's from February 4 until March 12, 2004. She was a part-time clerk.

During the course of her brief employment Ms. Logsdon had been absent several days. Manager Sue McCoy had advised her she needed to be at work on time as scheduled. On March 12, 2004, the claimant was scheduled to start her shift at 3:00 p.m. She notified Ms. McCoy that she was going to be late because her car broke down and she was stranded on the side of the road. The manager told her to come as soon as possible. About 90 minutes later she called and said she was still stranded. After another 90 minutes she called and talked to the assistant manager who said her shift had been covered, but she came in anyway around 6:30 p.m. At that time she was again told her shift had been covered. Ms. Logsdon then discovered she had been removed from the schedule.

Janine Logsdon filed a claim for unemployment benefits with an effective date of October 10, 2004. Her weekly benefit amount is \$80.00. Subsequent to her separation from Casey's, and prior to filing her claim for benefits, she earned more than \$800.00 from other employers.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is not.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The record establishes the claimant did not quit. She did show up for work, although nearly four hours after her scheduled start time. The employer does not have any specific policy, which notifies employees they will be considered a voluntary quit if they are no-call/no-show to work for a certain number of days.

However, it is evident the claimant was removed from the schedule when the manager determined her attendance was unacceptable. She had been warned she should be at work when scheduled but continued to miss work. The final incident was due to transportation problems and this is not considered to be an excused absence. Higgins v. IDJS, 350 N.W.2d 187 (Iowa 1984). Ms. Logsdon has requalified for benefits by earning at least ten times her weekly benefit amount subsequent to her separation and prior to filing her claim.

DECISION:

The representative's decision of November 12, 2004, reference 05, is modified in favor of the appellant. Janine Logsdon is qualified for benefits, provided she is otherwise eligible. However, the account of Casey's General Store will not be charged with benefits paid to the claimant.

bgh/pjs