

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

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CASEY'S MARKETING COMPANY
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ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-00358-SWT
OC: 12/12/04 R: 04
Claimant: Respondent (1)

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 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 3, 2005, reference 01, that concluded. A telephone hearing was held on January 15, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Carolyn Lammers participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked part-time for the employer as a pizza maker from August 3, 2004, to November 22, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant received a warning for being absent without notice to the employer on October 3, 2004.

The claimant was scheduled to work on November 27, 2004, from 4:00 p.m. to 11:15 p.m. and on November 28, 2004, from 10:00 a.m. to 1:45 p.m. The claimant and her husband became stranded due to car problems in Dubuque on the afternoon November 27, 2004. The claimant called the store and stated that she was stranded in Dubuque due to car problems and would not be into work until the car was fixed. She told the employee that she would contact the store as soon as she got back to town.

The claimant and her husband were not able to get the car parts to fix the car until the morning on November 28, 2004. When the claimant did not report to work at her scheduled time, the manager of the store discharged the claimant and wrote on her schedule that she was terminated. The claimant and her husband got back to town on November 28 between 2:00 p.m. and 3:00 p.m. When she went into the store, she saw the schedule the manager had written that she was discharged.

The manager discharged the claimant for being absent from work without calling in on November 28, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. The claimant called and told the person that she was stranded out of town and did not know when she would be back to work. It would have been prudent for the claimant to have called in again on November 28, 2004, to confirm her absence, but the employer knew from the telephone conversation the previous day that it was unlikely that the claimant would not be in on November 28.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated January 3, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/sc