

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**HOLLY A LUNA**  
Claimant

**APPEAL 20A-UI-01803-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 01/26/20**  
**Claimant: Respondent (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3-7 – Overpayment  
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's February 19, 2020, decision (reference 03) that concluded Holly Luna (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 16, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Dale Klocke, Store Manager. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 22, 2019, as full-time kitchen help/donut maker. She signed for receipt of the employer's handbook on November 22, 2019. The attendance policy did not contain a point system. The employer did not issue her any written warnings during her employment.

The claimant properly reported her absences due to medical issues on December 16, 17, 18, 30, 31, 2019. On December 24, 2019, the claimant properly reported she would be late for work. She did not appear for work and did not report her absence on December 24, 2019.

On January 7, 8, 15, 16, 17, 18, 19, 20, 2020, the claimant properly reported her absences due to medical issues. When she returned to work, the store manager talked to her about her absences. He said that if she was not going to be at work, he did not need her. The store manager did not warn her she could be terminated.

On January 22, 2020, the schedule was posted and the claimant was scheduled to work on January 26 and 27, 2020. On January 24, 2020, the claimant reported to the manager that she could not work on January 26, 2020, because she did not have childcare. She was never scheduled to work on Sundays and Mondays until the donut person quit. On January 24, 2020, the claimant asked for Sunday off. The store manager told the claimant that if she did not work on January 26 and 27, 2020, there was no reason for her to return to work.

The employer terminated the claimant for making the request. It terminated the claimant because she was bringing the moral of the workers down and it was catering to her too much. The employer did believe the claimant had been ill and saw her doctor when she missed work in the past.

The claimant filed for unemployment insurance benefits with an effective date of January 26, 2020. The employer provided the name and number of Shania Angel as the person who would participate in the fact-finding interview on February 18, 2020. The fact finder called but Ms. Angel but was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer's witness did not respond to the message. The employer provided some documents for the fact finding interview. The employer did not identify the specific rule or policy that the claimant violated which caused the separation. It did not include the circumstances of all incidents the employer contended met the definition of unexcused absences.

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

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) 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 has the burden of proof in establishing disqualifying job misconduct. 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 must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. All of the claimant's absences were properly reported and due to medical issues except for the absence on December 24, 2019. The claimant's absences do not amount to job misconduct because they were properly reported. One absence in two months is not excessive.

The employer changed the claimant's schedule. She requested the date off because she did not have a babysitter for a day she was not typically scheduled. The employer terminated the claimant for making the request. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

#### **DECISION:**

The representative's February 19, 2020, decision (reference 03) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/scn