

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA PHANTHOUVONG
Claimant

APPEAL NO: 09A-UI-02291-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

**Original Claim: 01-18-09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 12, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 6, 2009. The claimant participated in the hearing. Kristy Bowman, Area Supervisor, 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 manager for Casey's from January 15, 2007 to January 16, 2009. On January 9, 2009, the claimant left the employer a note indicating she was stepping down from the manager's position as of January 16, 2009. On January 14, 2009, the claimant called the employer and stated her car would not start but she had called her father and he was coming over to try to jump start her van. When he got there they discovered the alternator and another part were not working and it took most of the day to get the van fixed. The claimant did not call the employer back. She had no other attendance issues during her employment. The claimant was also responsible for making the daily deposit between 12:00 p.m. and 2:00 p.m. and that task was not performed January 14, 2009. The employer warned her December 31, 2008, that a second failure to make a deposit would result in termination. As a result of her absence January 14, 2009, and failure to make the daily deposit that same day the employer terminated the claimant's employment January 16, 2009.

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 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.

The employer has the burden of proving disqualifying misconduct. 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 claimant was absent January 14, 2009, she did call in and explain she was experiencing car trouble. Because of her car trouble she was unable to make the daily deposit. The two issues were the result of the same incident. The claimant did not have any previous attendance issues and her failure to make the bank deposit was because she could not make it to work because her car was not running. Additionally, the employer's policy states that two no-call no-show absences would result in termination. Consequently, the administrative law judge concludes this was an isolated incident of misconduct and as such does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The February 12, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs