

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALLY D EVELAND**

Claimant

**APPEAL NO. 09A-UI-06279-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 03/01/09**

**Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Sally Eveland filed an appeal from a representative's decision dated April 7, 2009, reference 04, which denied benefits based on her separation from Casey's Marketing Company. After due notice was issued, a hearing was held by telephone on May 20, 2009. The employer participated by Teresa Garrett, Area Supervisor. Ms. Eveland responded to the notice of hearing but was not available at the number provided at the scheduled time of the hearing.

**ISSUE:**

At issue in this matter is whether Ms. Eveland was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Eveland was employed by Casey's from November 12, 2008 until February 14, 2009 as a part-time cashier. She worked approximately 20 hours each week. She was discharged for repeated tardiness in reporting to work.

Ms. Eveland was late on January 23, 24, and 28 and February 1, 8, 11, 13, and 14. The tardiness ranged from seven minutes to almost two hours. She was warned about her attendance on January 25 and suspended for three days on January 28. Tardiness was the sole reason for the discharge.

**REASONING AND CONCLUSIONS OF LAW:**

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7).

The administrative law judge is not bound by an employer's designation of an absence as unexcused. Tardiness in reporting to work is considered a limited absence from work.

The evidence of record does not establish any reasonable cause for Ms. Eveland's repeated tardiness. Therefore, each occasion represents unexcused absenteeism. She accumulated eight occasions of tardiness over a period of three weeks. The administrative law judge considers this excessive. The tardiness continued in spite of warnings and a suspension. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. For the reasons cited herein, benefits are denied.

**DECISION:**

The representative's decision dated April 7, 2009, reference 04, is hereby affirmed. Ms. Eveland was discharged for misconduct in connection with her employment. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css