

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

MELINDA K PENMAN
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DES MOINES IA 50021

CASEYS MARKETING COMPANY
PO BOX 3001
ANKENY IA 50021

Appeal Number: 06A-UI-06374-DWT
OC: 05/28/06 R: 02
Claimant: Appellant (2)

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:

Melinda K. Penman (claimant) appealed a representative's June 14, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Casey's Marketing Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2006. The claimant participated in the hearing. Kim Schrier and Brenda Hutt appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 24, 2005. The claimant worked as a part-time clerk and cook.

In March 2006, Hutt gave the claimant a written warning for failing to report to work or contact the employer within the appropriate time to report she was unable to work as scheduled. After receiving the March warning, the claimant understood the next time she did not notify the employer when she was unable to work as scheduled, the employer would discharge her.

On May 27, the claimant hurt her toe during the day. The claimant finished her work shift on May 27. The claimant was scheduled to work again at 3:30 a.m. on May 28. Around 10:40 p.m., the claimant talked to Schrier to ask if Schrier could work the claimant's shift. The claimant thought she had broken her toe and did not know if she would be at work the next morning. The claimant informed Schrier she had been trying unsuccessfully to contact Hutt. Schrier was already scheduled to work and could not work for the claimant. When the two finished their call, Schrier understood the claimant would again try to contact Hutt. The claimant again tried to contact Hutt. Again no one answered Hutt's phone and there was no answering machine that picked up to leave a message.

When the claimant was unable to contact Hutt, she did not again call Schrier. The claimant could not report to work on May 28 because she was in pain and could not get a shoe on her foot. When the claimant was not at work, Schrier called the claimant's residence at 4:30 a.m. on May 28. Schrier told the claimant's mother that if the claimant did not report to work, she would be discharged. The claimant was unable to report to work because of her toe. The claimant did not contact Hutt on May 28 or afterwards because she was upset that the employer discharged her even though the claimant had notified the employer on May 27, that she was unable to work as scheduled on May 28. The employer discharged the claimant on May 28, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The facts establish the claimant used poor judgment when she did not contact Schrier for a second time to let her know she could not reach Hutt. The claimant had notified the employer on May 27 that she was unable to work at 3:30 a.m. the next day because she had injured her toe. Unfortunately, only Schrier and Hutt could cover for the claimant because the claimant was scheduled to make donuts on May 28.

The employer established business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally failed to report to work as scheduled. The claimant did not commit work-connected misconduct. Therefore, as of May 28, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 14, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of May 28, 2006, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf