

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE A STRICKLAND
Claimant

APPEAL NO. 08A-UI-04341-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 04-06-08 R: 03
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 30, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 20, 2008. The claimant did participate. The employer did participate through Traci Walker, Manager. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a cashier, part-time, beginning August 9, 2007, through March 14, 2008, when she was discharged.

Claimant called approximately ten minutes before her shift was to start at 2:00 p.m. saying she had car problems and would be late. When the employer talked to the claimant again later at 2:30 p.m., the claimant said she was having a panic attack and was given until 3:00 p.m. to get to work. After 3:00 p.m., when the claimant still had not shown up for work, the employer called again and the claimant said she could not come in to work. The claimant was then told by Ms. Walker that if she did not come into work, she would be discharged.

The claimant had three occasions of tardiness to work since she began at the store in January 2008. She was never given a final warning that her job was in jeopardy if she had one more occurrence of absenteeism or tardiness.

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 § 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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. A failure to report to work without notification to the employer is generally considered an unexcused absence. The claimant was never given a final warning about her attendance. She was entitled to fair warning that the employer was no longer going to tolerate her performance and conduct, that is her tardiness. Without fair warning, the claimant had no way of knowing that there were changes she needed to make in order to preserve her employment. The final warning given in October was not followed by the employer, as the claimant was allowed to be tardy to work on at least three occasions following the warning. The claimant had no other instances of missing work, other than her three instances of tardiness. Missing work due to transportation problems or lack of transportation are not excused absences. However, because the claimant was not warned that her job was in jeopardy, no final instance of misconduct had been established within the meaning of the law. Benefits are allowed. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983).

DECISION:

The April 30, 2008, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw