

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA M LEDESMA

Claimant

APPEAL NO. 10A-UI-14041-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/12/10

Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tina Ledesma filed an appeal from a representative's decision dated October 7, 2010, reference 01, which denied benefits based on her separation from Casey's Marketing Company. After due notice was issued, a hearing was held by telephone on November 22, 2010. Ms. Ledesma participated personally. The employer participated by Donna Kolsrud, Area Supervisor.

ISSUE:

At issue in this matter is whether Ms. Ledesma 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. Ledesma was employed by Casey's from January 9, 2008 until September 14, 2010 as a full-time assistant manager. She was discharged due to repeated tardiness and for mishandling cash.

Ms. Ledesma received a written warning concerning tardiness on December 21, 2009. She was late seven times from June 20 through August 14, 2010. The tardiness ranged from two minutes to over an hour and occurred on dates she was scheduled to be at work at 4:00 a.m. The tardiness was due to oversleeping. She received verbal warnings about her tardiness after the written warning of December 21. The decision to discharge was due to the fact that she was again late on September 12. She was scheduled to be at work at 4:00 a.m. but did not arrive until 4:37 a.m. Ms. Ledesma had left a voice message for her manager on the evening of September 11 indicating she was ill and would not be at work on September 12. She did not find a replacement worker to cover her shift. She set her alarm clock for September 12 for 4:00 a.m. The store was scheduled to open at 5:00 a.m. but did not open until 5:15 a.m. on September 12.

When Ms. Ledesma reported to work on September 12, she neglected to bring her keys. She went home to get them and returned to the store at approximately 5:00 a.m. She then opened the store safe and was taking money out when a customer entered the store. She left the money on the counter and the customer jokingly tried to remove it. There could have been as much as \$3,000.00 in the safe from the prior day's business. Ms. Ledesma's handling of the cash on this date, combined with her repeated tardiness, caused the employer to discharge her on September 14, 2010.

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.

Ms. Ledesma was late reporting for work on eight occasions after June 20, 2010. She knew from the written and verbal warnings that her tardiness was unsatisfactory and was jeopardizing her continued employment. In spite of the warnings, she continued to arrive at work late on some occasions. Her tardiness was due to oversleeping, which is not an acceptable reason for missing time from work. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). It is true that Ms. Ledesma had given notice on September 11 that she was ill. However, she was not absent on September 12 because of illness; she decided to report for work.

Once Ms. Ledesma decided to report for work, she had an obligation to do so timely. She was not late due to illness. She was late due to oversleeping. She testified that she set her alarm for 4:00 a.m., the same time she was scheduled to be at work. This suggests to the administrative law judge that her intentions regarding September 12 were not in good faith. For the reasons cited herein, it is concluded that all of the tardiness identified on the record is unexcused. Seven occasions of unexcused tardiness over a period of three months is excessive.

Ms. Ledesma used poor judgment in leaving cash on the counter in the presence of a customer. The fact that he was a regular customer does not eliminate the possibility of theft. However, Ms. Ledesma did not have a history of improperly handling cash. This isolated instance of poor judgment was not an act of misconduct.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Ms. Ledesma was discharged for excessive unexcused absenteeism within the meaning of the law. As such, benefits are denied.

DECISION:

The representative's decision dated October 7, 2010, reference 01, is hereby affirmed. Ms. Ledesma was discharged by Casey's for disqualifying misconduct. Benefits are denied 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.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw