

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA A LEWIS

Claimant

APPEAL NO. 14A-UI-02175-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 02/02/14

Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 19, 2014, reference 01, which denied unemployment insurance benefits finding that she was discharged from work for excessive unexcused absenteeism and tardiness after being warned. After due notice was provided, a telephone hearing was held on March 19, 2014. Claimant participated. Participating as witnesses were Ms. Shawna Williams, a former employee/personal friend and Jada Swist, a former employee/personal friend. The employer participated by Peggy Lettington, Area Supervisor. Employer's Exhibits A, B, C, D, E and F were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged under disqualifying conditions.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: Jessica Lewis was employed by Casey's Marketing Company from November 7, 2012 until January 31, 2014 when she was discharged from employment. Ms. Lewis last held the position of full-time store manager and was paid by salary. Her immediate supervisor was the area supervisor, Peggy Lettington..

Ms. Lewis was discharged on January 31, 2014 for being excessively absent and tardy while employed by Casey's Marketing Company. Ms. Lewis had received written warnings from the company regarding attendance and punctuality on July 15, 2013 and August 5, 2013. The claimant's last warning also included a suspension from work. Ms. Lewis had been tardy in reporting to work on ten occasions between July 1 and July 15, 2013 resulting in her July 15 warning and was warned at that time that further tardy violations could result in her termination from employment. When the claimant reported 21 minutes late on August 15, 2013, she was warned and suspended.

Ms. Lewis continued to report to work tardy on an intermittent basis during the fall of 2013 and continued to be verbally counseled by Ms. Lettington that her late arrivals were unsatisfactory.

A final decision was made to terminate Ms. Lewis from her employment when she arrived at work 18 minutes late on January 27, 2014 and 10 minutes late on January 28 and 29, 2014. The claimant arrived shortly after her beginning time 7:00 a.m. on January 30, 2014. During this time the claimant was experiencing transportation issues and had made the area supervisor orally aware of the transportation problems. Based upon the repetitive nature of the claimant's tardiness after the previous warnings that had been served upon her, a decision was made to terminate Ms. Lewis from her employment.

Established company policy provides that employees are not able to substitute vacation time for tardy or absence unless the vacation time has been approved in advance. Policy prohibits employees from using sick time to cover tardiness or absence when the employee is not actually ill. The company keeps track of attendance violations on a rolling 12-month period and absences or tardiness are not calculated as new infractions as of January 1 each year.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged under disqualifying conditions. It does.

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 proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits.

Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of job misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Supreme Court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility", e.g. transportation problems and oversleeping are considered unexcused.

Inasmuch as the evidence in the record establishes that Ms. Lewis had been properly warned by her employer and that her unexcused tardiness continued, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld until the claimant works in and has been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated February 19, 2014, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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