

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE L ROHLOFF
Claimant

APPEAL NO. 12A-UI-04172-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING CO
Employer

OC: 03/04/12
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Casey's, filed an appeal from a decision dated April 4, 2012, reference 01. The decision allowed benefits to the claimant, Julie Rohloff. After due notice was issued, a hearing was held by telephone conference call on May 8, 2012. The claimant participated on her own behalf. The employer participated by Manager Margaret Highland.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Julie Rohloff was employed by Casey's from June 4, 2010 until March 6, 2011 as a full-time cook. The claimant had received the employee handbook which set out the rules and policies employees were expected to observe. Ms. Rohloff did not read the handbook.

She had received three disciplinary actions, one for violating the dress code, one for being no-call/no-show, and a third for tardiness. The warning for the first no-call/no-show did indicate her job was in jeopardy if there were any further occurrences.

On March 5, 2012, the claimant was scheduled to work 3:00 p.m. until 11:00 p.m. She called the store around 1:30 or 2:00 p.m. and left a message with a co-worker for Manager Margaret Highland. She stated she would be late because she needed to pick up a prescription that would not be ready for a while. The policy requires employees who are going to be tardy or absent to speak directly with a supervisor, and Ms. Highland was in the store at the time.

Around 5:30 p.m., the claimant called again and instead of speaking with the manager, who was still there, she left a message with a co-worker she would not be in for the entire shift due to a death in the family. The next day Area Supervisor Deb Arends called the claimant to find out what was going on. Ms. Rohloff became irate and hung up the phone during the conversation. When she called back sometime later, she was told she had been "let go."

Julie Rohloff has received unemployment benefits since filing a claim with an effective date of March 4, 2012.

REASONING AND CONCLUSIONS OF LAW:

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 claimant was discharged for failing to follow the proper call-in procedures and for insubordination. She elected not to make herself familiar with the provisions of the handbook about the proper call-in procedures. The absence on March 5, 2012, was therefore unexcused because it was not properly reported. In addition, rather than discussing her situation with the area supervisor, she became irate and hung up in the middle of the conference. This is insubordination. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of April 4, 2012, reference 01, is reversed. Julie Rohloff is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw