

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORTNEY TAYLOR

Claimant

APPEAL NO: 12A-UI-09255-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 07-01-12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 23, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 23, 2012. The claimant participated in the hearing. Laureen Harry, manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier/cook for Casey's from November 10, 2011 to July 3, 2012. On July 1, 2012, the claimant called Manager Laureen Harry shortly before her 4:00 p.m. shift to state she would not be in because she was being arrested for driving without a driver's license and was going to jail. On July 2, 2012, the claimant was scheduled at 11:00 a.m. She had been released from jail that morning but had to find a ride home and finally received a ride from a Good Samaritan. She had just gotten home and was charging her phone when Ms. Harry called her at 11:02 a.m. and asked where she was. The claimant stated she just got home, knew she was scheduled that day, and would be in as soon as she cleaned up, if she could find a ride. Ms. Harry stated she did not know if she could keep her job, especially given the claimant did not have a driver's license, and there was no point in coming in until Ms. Harry spoke to her supervisor to find out how to proceed. The claimant told Ms. Harry she could be there in an hour and Ms. Harry told her not to worry about it. The claimant called Ms. Harry later that afternoon to find out her employment status, but Ms. Harry's supervisor had not responded to her yet. On July 3, 2012, Ms. Harry called the claimant and notified her that her employment was terminated. The claimant had not received any verbal or written warnings regarding her attendance during her tenure with this employer.

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 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). 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). The claimant had two unexcused absences that occurred July 1 and July 2, 2012. There is no evidence of previous unexcused absences or any verbal or written warnings issued to her regarding her attendance. Under these circumstances, the administrative law judge concludes that two unexcused absences do not constitute

excessive, unexcused absenteeism as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 23, 2012, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw