

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY A MAHARRY
Claimant

APPEAL NO. 11A-UI-08406-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/22/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 14, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 20, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Dawn Logston participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a cashier from June 2, 2009, to April 12, 2011. She was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The policy expectation was to call in two hours ahead of the shift. The claimant received a verbal warning for an absence without notice in June 2010. She received a written warning on April 5, 2011, for excessive absences due to her grandfather's funeral, a back injury, and illness. She was warned that she had only provided eight minutes' notice of her April 4 absence. The claimant had planned to go to work on April 4 but became sick shortly before she planned to go to work. She was informed that she was to have no further absences in the next 60 days.

The claimant was absent due to legitimate illness on April 14 and 15 with proper notice to the employer. She was discharged shortly after missing work on April 15.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(7) provides:

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 evidence establishes that the claimant's absences were due to illness or other reasonable grounds. The final absences were properly reported. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated June 14, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw