

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SERENA PANNHOFF
Claimant

APPEAL NO: 11A-UI-11325-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/24/11
Claimant: Appellant (5)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Serena Pannhoff (claimant) appealed an unemployment insurance decision dated August 19, 2011, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Casey's Marketing Company (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 21, 2011. The claimant participated in the hearing. The employer participated through Karen Wessels, Store Manager. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time cashier/cook from January 12, 2011 through July 16, 2011. She missed work due to incarceration on July 3, 4, 14 and 16, 2011. The claimant was a no-call/no-show on July 14 and 16, 2011 and the employer discharged her for attendance.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

871 IAC 24.32(7) provides:

(7) 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged on July 16, 2011 for excessive unexcused absenteeism. Excessive unexcused absenteeism, a concept which includes tardiness, is misconduct. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Two consecutive no-call/no-show absences can constitute job misconduct. *Boehm v. IDJS*, (Unpublished, Iowa App. 1986). Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated August 19, 2011, reference 01, is modified with no effect. The claimant is not eligible to receive unemployment insurance benefits because she was discharged from work for misconduct. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs