

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA L LANKFORD**  
Claimant

**APPEAL NO. 09A-UI-14730-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**Original Claim: 10/05/08  
Claimant: Respondent (1)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 23, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on October 28, 2009. Claimant Amanda Lankford participated. Lori Kelso, Store Manager, represented the employer. Exhibit One was received into evidence.

**ISSUE:**

Whether Ms. Lankford separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Amanda Kelso started her part-time employment with Casey's in March 2009 and worked as a part-time pizza maker/stocker until August 10, 2009. On August 12, Ms. Lankford was absent due to the illness of her child and properly reported the absence to the employer. On August 14, Ms. Lankford contacted the store to see when she was next scheduled to work. The assistant manager told Ms. Lankford that she had been on the schedule to work August 15 and 16, but that the employer had made arrangements for someone else to work those shifts. On August 17, Ms. Lankford called and spoke to her supervisor, Store Manager Linda Bond, about when she was next scheduled to work. Ms. Bond directed Ms. Lankford to come to the store for a meeting.

Ms. Lankford met with Ms. Bond on August 17. At that time, Ms. Bond asserted that Ms. Lankford had been absent without contacting the employer on August 15 and 16. Ms. Lankford told Ms. Bond of her August 14 conversation with the assistant manager. Ms. Bond said she would speak to the assistant manager, but asserted Ms. Lankford had voluntarily quit the employment and that the employment was ended.

Ms. Bond is still with Casey's, but has transferred to a different store and is no longer a manager. The employer witness, Lori Kelso, is the new store manager in Fort Dodge and has no personal knowledge of Ms. Lankford's employment.

## 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 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 benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility, such as transportation and oversleeping, are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

The employer has failed to present sufficient evidence, and sufficiently direct and satisfactory evidence, to establish either a voluntary quit or a discharge for misconduct. The employer had the ability to present testimony from persons with personal knowledge of Ms. Lankford's employment and elected not to do so. The weight of the evidence in the record establishes an absence due to illness properly reported on August 12, 2009. The evidence indicates that Ms. Lankford was not absent from her shifts on August 15 and 16. Instead, the employer had taken those shifts away.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Lankford was discharged for no disqualifying reason. Accordingly, Ms. Lankford is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Lankford.

**DECISION:**

The Agency representative's September 23, 2009, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw