

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIE A BACHMAN
Claimant

APPEAL NO. 09A-UI-08811-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/19/09
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 9, 2009, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 7, 2009. Claimant participated. Employer participated by Jean Cue. Exhibit One, pages 1 – 5, was admitted into evidence.

ISSUES:

The issues in this matter are whether the claimant quit for good cause attributable to the employer or whether the claimant committed misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 12, 2009. The employer discharged the claimant after she was not at work on April 14 and 15, 2009 and did not call in.

The claimant left work one hour early on April 12, 2009 because of a dispute with a co-employee. The employer indicated on the Employee Separation form this was approved but testified it was unapproved. The employer testified the claimant was a no-call/no-show on April 13 and 14, but the Employee Separation form indicates the 14 and 15. Exhibit 1, page 1. The claimant testified she did not work Wednesdays. The claimant provided a note to her employer informing the employer days she could not work in April which included April 14, 2009. The employer has a policy which holds that two no-call/no-show is grounds for discharge.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to the employer or that the claimant committed misconduct when claimant was terminated for attendance issues.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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 presented conflicting evidence as to the days the claimant was a no-call/no-show. In one document the one hour absence was excused. The days the claimant was absent as no-call and no-show were not consistent between the testimony and the documentation. The claimant credibly testified she informed her employer, in writing, the days she was not available for work at Casey's in April. The employer had knowledge as to why the claimant was absent. The evidence does not support the employer's assertion the claimant was scheduled to work on Wednesday, April 15. The employer testified that on rare occasions with two weeks' notice the claimant worked on Wednesdays. The employer did not provide the schedule to the claimant two weeks in advance. The employer may have scheduled the claimant to work on April 14, but the claimant had informed the employer in advance she could not work. The employer has failed to show the claimant committed misconduct and the claimant has shown she did not voluntarily quit her employment.

DECISION:

The decision of the representative dated June 9, 2009, reference 02, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/css