

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARRIE GARRARD
Claimant

APPEAL NO: 13A-UI-11357-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 09/08/13
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a - Discharge for Misconduct
871 IAC 24.32(7) - Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Carrie Garrard (claimant) appealed an unemployment insurance decision dated October 1, 2013, reference 01, which held that she was not eligible for unemployment insurance benefits because she was discharged from Casey's Marketing Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 1, 2013. The claimant participated in the hearing with Attorney Larry Johnson. The employer participated through Area Manager Pat Bissell and Employer Representative Dana Stewart.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 kitchen employee from June 2003 until she was discharged on August 26, 2013. She was hired full time but was reduced to part time on June 18, 2007 due to excessive absences and failure to work 70 hours in a two-week period. The claimant was discharged from employment on due to violation of the employer's attendance policy with a final incident on August 24, 2013 when she was late for work. She was last warned on July 9, 2013, that she faced termination from employment upon another incident of unexcused absenteeism. She was late for work on July 6, 2013 because she overslept and she again overslept on July 7, 2013. The employer called her and she said she would be in but never arrived. The employer called her again and the claimant said she would not be in due to personal reasons.

The claimant had received a final warning for attendance on October 22, 2012 but the area supervisor gave her an extra chance in June 2013. Previous warnings for attendance were issued on April 30, 2010; March 26, 2012; May 21, 2012; and October 15, 2012.

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. 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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits due to work-related misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on August 27, 2013 for 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. 871 IAC 24.32(7).

The Iowa Supreme Court in the case of *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is a form of misconduct and includes tardiness, leaving early, etc. The Court in the case of *Harlan v. Iowa Department of Job Service*, 350 N.W.2d 192 (Iowa 1984) held that absences due to matters of "personal responsibility such as transportation problems and oversleeping are considered to be unexcused."

The employer has established that the claimant was warned that further unexcused absences could result in termination of employment and the final absence was not excused. The final absence, in combination with the claimant's history of absenteeism, is considered excessive. Benefits are denied.

DECISION:

The unemployment insurance decision dated October 1, 2013, reference 01, is affirmed. 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/css