

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA J JONES

Claimant

APPEAL NO. 11A-UI-00823-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS GENERAL STORES

CASEY'S MARKETING CO

Employer

OC: 11/28/10

Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(7) – Excessive Unexcused Absenteeism

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated January 11, 2011, reference 01, which denied unemployment insurance benefits based upon her separation from Casey's General Stores. After due notice, a telephone hearing was held on February 23, 2011. Claimant participated personally. The employer participated by Ms. Shiela McGraw, Store Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Cynthia Jones was employed by Casey's General Stores from February 26, 2009 until November 5, 2010 when she was discharged from employment. Ms. Jones worked as a part-time cook and was paid by the hour. Her immediate supervisor was Shiela McGraw.

The claimant was discharged when the employer concluded that she had been excessively absent. Ms. Jones had received a final warning on September 15, 2010 that warned her that any additional absences could result in her termination. The claimant had been previously absent from work on a number of occasions due to back problems and one or more heart attacks. Ms. Jones had submitted doctors' verifications to the employer of her necessity to be absent.

A decision was made to terminate the claimant after Ms. Jones called in absent on November 2 and 3, 2010. Ms. Jones properly called in advance of her work shift to report that she could not report to work because of a serious medical issue concerning her granddaughter. Ms. Jones is the granddaughter's guardian and needed to stay with her adolescent granddaughter in the hospital because the granddaughter had given birth and was having complications.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 Supreme Court of the state of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive unexcused absenteeism is one form of misconduct. The Court further held, however, absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer.

The evidence in the record establishes that Ms. Jones properly notified her employer of her impending absences on November 2 and 3, 2010 and that the claimant was absent for an

excusable reason, a serious medical condition concerning her adolescent granddaughter. Employer has the burden of proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. 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. of Appeals 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8). An employer may discharge an employee for any number of reasons or for no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, the employer incurs liability for unemployment insurance benefits related to that separation. Inasmuch as the claimant had provided required notice and her reasons for being absent were compelling, the employer has not met the burden of proof to establish the claimant engaged in job misconduct. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated January 11, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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