

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK N CARTEE**

Claimant

**APPEAL NO. 13A-UI-13250-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/03/13**

**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated November 25, 2013, reference 02, that held the claimant was not discharged for excessive unexcused absenteeism on October 31, 2013 and benefits are allowed. A hearing was held on December 19, 2013. The claimant participated. Sherry Ackerman, Store Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant was hired on August 16, 2011 and last worked as full-time kitchen help on October 31, 2013. The claimant received the employer attendance policy that provides for reporting absences from work.

The claimant reported to work at 3:00 p.m. on October 31. He became ill and left at 7:15 p.m. He advised the cashier why he was leaving and asked her to leave a note for the manager. He contacted a third shift worker who agreed to come in and cover his remaining shift. The note stated claimant left early and he was not feeling well.

When the store manager got the note the next day, she called the claimant saying he quit by leaving early. He responded "I'm fired?" She said yes. Claimant had given no advance notice he was quitting and there was no reference to it in the note. He denies he quit.

**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(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 administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on October 31, 2013, for excessive "unexcused" absenteeism.

A voluntary quit requires an intention to quit accompanied with an overt act. Claimant made no statement he was quitting when he left early due to illness, and the note confirms this was the reason he left. Claimant denied he quit when contacted the next day. The employer decision to terminate claimant as a voluntary quit is not consistent with the fact.

While leaving early due to illness without contacting the store manager who is not present might be a policy violation, it does not constitute job disqualifying misconduct. Claimant had an excusable reason for leaving early, he gave notice to another employee to leave a note for the manager, and he got another employee to cover his remaining shift.

**DECISION:**

The decision of the representative dated November 25, 2013, reference 02, is affirmed. The claimant was not discharged for misconduct on October 31, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs