

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARITY A PIGSLEY**  
Claimant

**APPEAL NO. 12A-UI-00546-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 12/11/11**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated January 11, 2012, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on February 9, 2012. The claimant participated personally. The employer participated by Ms. Melanie Cline, Store Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Charity Pigsley was employed by Casey's Marketing Company from May 9, 2011 until November 14, 2011 when she was discharged from employment. Ms. Pigsley worked as a full-time cashier and pizza cook and was paid by the hour. Her immediate supervisor was Melanie Cline.

Ms. Pigsley was discharged based upon her failure to report to work on time on the morning of November 14, 2011. The claimant was scheduled to begin work at 4:45 a.m. that day but did not report until 7:45 a.m. because the claimant had been up most of the night with a sick child and had "overslept." Ms. Pigsley called in immediately upon waking up to inform the employer that she was running late and reported to work as soon as she could. Because the violation was considered to be a serious one, a decision was made to terminate Ms. Pigsley although she had not been previously absent or tardy and had not been previously warned or counseled.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes disqualifying misconduct sufficient to warrant the disqualification for benefits. It does not.

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 insurance benefits. Conduct that may be serious enough to warrant a discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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)

The 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 one form of misconduct. The Court held that the absences must be both excessive and unexcused and that the concept includes tardiness, leaving early, etcetera. The Supreme Court in the case of Harlan v. Iowa Department of Job Service, 350 N.W.2d 192 (Iowa 1984) held that absence due to matters of "personal responsibility", e.g. transportation problems and oversleeping are considered to be unexcused. The Court however in the case of Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989) held that a single unexcused absence does not constitute misconduct even in a case where a worker disregarded specific instructions to call the employer and did not do so.

The question in this case is not whether the employer had a right to discharge Ms. Pigsley for the above-stated reason but whether the discharge is disqualifying under the provision of the Employment Security Law. While the decision to terminate the claimant may have been a

sound decision from a management viewpoint, the administrative law judge concludes based upon the Court ruling in the Sallis case that the claimant's single unexcused absence did not constitute misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated January 11, 2012, reference 01, disqualifying the claimant from receiving benefits is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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