

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CANDY M CORMENY**  
Claimant

**APPEAL NO. 09A-UI-15876-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING CO**  
Employer

**OC: 09/20/09**  
**Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Casey's Marketing Company filed an appeal from a representative's decision dated October 8, 2009, reference 01, which held that no disqualification would be imposed regarding Candy Cormeny's separation from employment. After due notice was issued, a hearing was held by telephone on November 23, 2009. Ms. Cormeny participated personally. The employer participated by Kathy Monthei, Store Manager.

**ISSUE:**

At issue in this matter is whether Ms. Cormeny was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Cormeny was employed by Casey's from May 16, 2008 until September 19, 2009 as a full-time cashier. When she got off work at 7:00 a.m. on September 18, her manager spoke with her about working Saturday, September 19. When Ms. Cormeny indicated she would be unable to work the shift, the manager said she had to because she had just missed work and had been off the previous two weekends. She stated that Ms. Cormeny had to work the weekend because no one else was available. When Ms. Cormeny continued to say she would be unable to work, she was discharged.

Ms. Cormeny was told she was being discharged because she had missed too much work. She was off work from May 15 until July 3 because she was in a car accident. She had not been warned about her attendance prior to September 18, 2009. Attendance was the sole reason given for the discharge.

**REASONING AND CONCLUSIONS OF LAW:**

The parties disagree as to whether the separation was a quit or a discharge. After observing the demeanor of the witnesses, the administrative law judge found Ms. Cormeny more credible

and persuasive. She testified that she was told she was being let go because she had missed too much work. For the above reasons, the separation shall be considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). An individual who was discharged because of attendance is disqualified from benefits if she was excessively absent on an unexcused basis. In order for an absence to be excused, it must be for reasonable cause and must be properly reported. 871 IAC 24.32(7). The administrative law judge is not bound by an employer's designation of an absence as unexcused.

The employer failed to present evidence to establish that Ms. Cormeny was excessively absent on an unexcused basis. Having taken the position that she quit, the employer did not offer evidence of any misconduct on her part. She had missed almost two months of work from May 15 until July 3. However, the absences were due to injuries she sustained in a car accident. There is no evidence in the record concerning other absences prior to September 18, 2009. Moreover, Ms. Cormeny was never warned that her attendance was jeopardizing her continued employment with Casey's.

For the reasons stated herein, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Ms. Cormeny should be disqualified from receiving job insurance benefits. Accordingly, benefits are allowed.

**DECISION:**

The representative's decision dated October 8, 2009, reference 01, is hereby affirmed. Ms. Cormeny was discharged by Casey's but disqualifying misconduct has not been established. Benefits are allowed, provided she is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs