

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TIFFANY NOELLER**  
Claimant

**APPEAL NO: 10A-UI-09622-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 05-16-10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 24, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 24, 2010. The claimant participated in the hearing. David Dowd, Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cook/cashier for Casey's from September 15, 2009 to May 18, 2010. The claimant received a written warning February 8, 2010, for a no-call/no-show February 6, 2010. She received a written warning April 13, 2010, for calling in right before the start of her shift leaving the employer little time to find a replacement on several occasions and going home early without permission. On May 15, 2010, the claimant was scheduled to work at 5:00 p.m. She called Manager David Dowd that afternoon and said her boyfriend was having issues and his 13-year-old son was staying with her and asked if anyone could work for her. Mr. Dowd was unable to find a replacement for her but agreed her boyfriend's son could come to the store with her for a while. The claimant indicated he had a friend across the street from the store and assured Mr. Dowd she would be in on time. At 5:05 p.m. the other employee on duty called Mr. Dowd and said the claimant was not there. Mr. Dowd called the claimant and she said she went to the store but had to leave and would be back later because she was dealing with stress and the issues with her boyfriend. Around 6:00 p.m. or 6:30 p.m. Mr. Dowd spoke to the claimant and she said she would not be in and asked what would happen and he indicated he did not know but they would talk later. Mr. Dowd found an employee to work for the claimant May 16, 2010, because she was still having issues. On May 18, 2010, Mr. Dowd notified the claimant that her employment was terminated.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant had one no-call/no-show February 6, 2010, and received a written warning. Her last absence, while effectively a no-show was not a no-call. Iowa law states that three consecutive no-call/no-shows constitute a voluntary quit. That did not happen in this case. The question then becomes whether her absences were excessive. The administrative law judge concludes they were not. The employer cited the no-call/no-show February 6, 2010, and the last absence May 15, 2010, in addition to her calling in too close to the start of her shift on different, undocumented occasions. That is not enough evidence, however, to find the claimant's absenteeism to be excessive and unexcused. Therefore, benefits are allowed.

**DECISION:**

The June 24, 2010, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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