

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW AUDINO
Claimant

APPEAL NO: 12A-UI-07867-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 05-13-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 21, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on July 30, 2012. The claimant participated in the hearing. Paula Devore, Manager and Sue Gullion, Area Supervisor, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

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 clerk for Casey's from January 10, 2012 to May 15, 2012. On May 9, 2012, the claimant saw the new schedule and was unhappy with his hours. He became more upset and after 15 minutes told Manager Paula Devore he was having an anxiety attack and went home. On May 10, 2012, he called in at 9:40 a.m. for his 10:00 a.m. shift and stated his truck would not start and he would not be in to work. On May 11, 2012, he called in and told the second assistant manager he would not be at work that day. He did not ask to speak to Ms. Devore, who was at the store, and she attempted to call him back three times but he did not answer. Later that day a co-worker called the claimant and said he was no longer on the schedule. The claimant called Ms. Devore at home May 12, 2012, to ask why he was removed from the schedule and was told she took him off the schedule for at least the next three weeks because he was unreliable. The claimant asked her if he would be on the next schedule and she told him she worked Monday through Friday from 5:00 a.m. to 2:00 p.m. Ms. Devore has also replaced the claimant for his shift May 12, 2012. The claimant believed he was off the schedule for three weeks so did not contact Ms. Devore until May 17, 2012, at which time Ms. Devore told him it was not necessary for him to come in and speak to her because she was not going to put him back on the schedule.

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 suffered an anxiety attack upon seeing his schedule May 9, 2012, and told the employer he had to go home. He then called in the following two days to report his absences, the first day due to transportation problems and the second day due to illness. While the claimant should have answered his phone after calling in and simply stating he would not be in May 11, 2012, that is not enough evidence to conclude the claimant intended to quit his job. After Ms. Devore replaced him for his May 12, 2012, shift and notified him that she removed him from the schedule for the next three weeks, it was not imperative that the claimant contact her Monday, May 14, 2012, but rather that he speak to her prior to the end of that three-week period. Under these circumstances, the administrative law judge must conclude the claimant did not voluntarily

quit his job but instead was discharged when the employer took him off the schedule for three weeks and then told him there was no point in further discussing the matter because she was not going to put him back on the schedule. The employer terminated the claimant's employment for no disqualifying reason. Therefore, benefits are allowed.

DECISION:

The June 21, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs