

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS T SMITH
Claimant

APPEAL NO. 10A-UI-04942-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/07/10
Claimant: Appellant (1)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Chris Smith filed an appeal from a representative's decision dated March 31, 2010, reference 01, which denied benefits based on his separation from Casey's Marketing Company. After due notice was issued, a hearing was held by telephone on May 11, 2020. Mr. Smith participated personally. The employer participated by Bill Brauer, Distribution Center Manager, and Chris Muhlbauer, Warehouse Supervisor. Exhibits One through Six were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Smith 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: Mr. Smith was employed by Casey's from July 23, 2008 until March 3, 2010. He worked full time pulling orders in the warehouse. He was discharged because of his attendance. The employer only considered those absences that occurred during the prior 12 months.

Mr. Smith was absent without calling in on September 13 and 14, 2009 because he was in jail. He missed one-half a day on December 3 because he did not have transportation. He was absent February 14 and part of the day on February 17 for personal reasons. The decision to discharge was based on the absence of February 28 when he missed work because he did not have transportation. Mr. Smith received a written warning and one-day suspension on January 13, 2010 because of his attendance. Attendance was the sole reason for the discharge on March 3, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 he 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.

Mr. Smith's absences of September 13 and 14 are unexcused as they were not properly reported to the employer. The absences of December 3 and February 28 are unexcused as they were due to lack of transportation. Absences due to matters of purely personal responsibility, such as transportation, are not excused. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Mr. Smith was absent on February 14 and 17 for "unknown" reasons. They were not coded as being due to illness, plant injury, or medical appointment. Other absences taken for these reasons were coded as such by the employer. Because the absences of February 14 and 17 were coded as "unknown," the administrative law judge presumes they were for personal reasons.

Even excluding February 14 and 17, Mr. Smith still had four periods of unexcused absenteeism during a period of less than six months. The administrative law judge considers this excessive. Excessive unexcused absenteeism constitutes a substantial disregard of the standards an employer has the right to expect and is, therefore, misconduct within the meaning of the law. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated March 31, 2010, reference 01, is hereby affirmed. Mr. Smith was discharged by Casey's for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs