

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KERRIE L STEEN**  
Claimant

**APPEAL NO. 13A-UI-04193-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 03/10/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from a representative's decision dated March 27, 2013, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on May 13, 2013. The claimant participated. The employer participated by Ms. Felisha Thomas, Store Manager. Employer's Exhibits One, Two and Three were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Kerrie Steen was employed by Casey's Marketing Company from April 13, 2012 until her discharge on March 7, 2013. Ms. Steen was most recently employed as a full-time donut maker working 3:00 a.m. to 10:00 a.m. and was paid by the hour. Her immediate supervisor was Ms. Thomas.

Ms. Steen was discharged for excessive absenteeism. Ms. Steen had been given one verbal warning and had received a written warning on December 14, 2012 for attendance violations. The majority of the claimant's absences were due to migraine and other "sicknesses." Ms. Steen on most occasions notified her employer prior to the beginning of the work shift of impending absences. The store manager was aware that the claimant was often absent and was aware that the claimant lived a distance away from work. Because of the early morning work shift and the other factors, Ms. Thomas allowed Ms. Steen extra consideration before warning her and ultimately discharging her.

The final infraction that caused the claimant's discharge took place on March 7, 2013 when Ms. Steen overslept because migraine medications had affected the claimant's ability to hear her alarm clock that morning. The claimant called in as soon as possible after waking up.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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. 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. of Appeals 1992).

The evidence in the record establishes that the claimant was excessively absent but the absences were due to illness and were in most cases properly reported. The final attendance infraction that caused the claimant's discharge took place when medications taken for a

migraine prevented the claimant from waking up in time to report for her 3:00 a.m. start time. The employer was aware at the time Ms. Steen was hired that she had migraines and often had other health issues. The store manager delayed in issuing warnings because she recognized the claimant's health issues, the distance to work and the early morning work shift were factors in the claimant's attendance issues.

Based upon the evidence in the record, the administrative law judge concludes that the employer has not sustained its burden of proof in showing intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. The claimant could not report her last tardiness in advance as she had overslept and attempted to report for work as soon as possible. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated March 27, 2013, reference 01, is affirmed. Claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant then 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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