

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RACHEL L CHAPMAN**  
Claimant

**APPEAL NO. 11A-UI-03416-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 11/15/09**  
**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Casey's, filed an appeal from a decision dated March 11, 2011, reference 03. The decision allowed benefits to the claimant, Rachel Chapman. After due notice was issued, a hearing was held by telephone conference call on April 7, 2011.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 9:03 a.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless she contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 9:21 a.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Manager Treasure Small.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Rachel Chapman was employed by Casey's from November 2010 until January 4, 2011 as a part-time cashier/cook. She received a notice that the employee handbook was in the store office and she was to read it and be aware of the company policies. One such policy states that two or more unexcused absences in the first 90 days of employment is considered excessive and is grounds for discharge. Ms. Chapman missed a lot of work due to medical issues, but the absences were usually approved in advance or she provided a doctor's excuse.

She was scheduled to work December 31, 2010 and January 1, 2011. On December 31, 2010, she called the store and said she would be late but never showed up and never called again. This is considered a no-call/no-show. On January 1, 2011, she was no-call/no-show as well, because she did not call in at all.

Manager Treasure Small was advised of the no-call/no-shows on Monday, January 3, 2011, and the claimant's next scheduled day of work was January 4, 2011. At that time, she was discharged by Ms. Small. For her absence on New Year's Eve, she only said that her husband "would not let her leave," and gave no explanation at all for being no-call/no-show for January 1, 2011.

Rachel Chapman has received unemployment benefits since filing an additional claim with an effective date of January 16, 2011.

The record was closed at 9:21 a.m. At 9:23 a.m., the claimant called and requested to participate. She had elected to use a cell phone in spite of the recommendation against their use on the notice of the hearing. She did not hear the phone ring when the judge called and did not answer.

### **REASONING AND CONCLUSIONS OF LAW:**

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 claimant was no-call/no-show to work for two days in violation of a known company rule. The explanation that her husband “would not let her leave” to go to work on December 31, 2010, does not explain the underlying cause and the administrative law judge cannot consider it to be a valid reason for missing work or failing to notify the store that she would be absent rather than tardy. The failure to notify the employer at all on January 1, 2011, has also not been explained. These must be considered unexcused absences. Matters of purely personal consideration are not considered an excused absence. *Harlan v. IDJS*, 350 N.W.2d 192 (Iowa 1984). The claimant was discharged for excessive, unexcused absenteeism. Under the provisions of the above Administrative Code section, this is misconduct for which the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer’s account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual’s separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

The next issue is whether the record should be reopened. The judge concludes it should not.

871 IAC 26.14(7) provides:

(7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.

a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.

b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.

c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant contacted the Appeals Section in response to the judge's call after the record had been closed. Although she may have intended to participate in the hearing, she failed to read or follow the hearing notice instructions and elected to use a cell phone for the hearing. While this is a personal choice, it carries with it the assumption of risk that the phone will have transmission and reception problems. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The claimant did not establish good cause to reopen the hearing. Therefore, her request to reopen the hearing is denied.

**DECISION:**

The representative's decision of March 11, 2011, reference 03, is reversed. Rachel Chapman is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw