

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ROBIN A CARTER
LOT 16
121 E LANE
WINTERSET IA 50273**

**CASEYS GENERAL STORE
c/o TALX UC EXPRESS
P O BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-11537-HT
OC: 10/03/04 R: 03
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Casey's General Store (Casey's), filed an appeal from a decision dated October 19, 2004, reference 01. The decision allowed benefits to the claimant, Robin Carter. After due notice was issued a hearing was held by telephone conference call on November 18, 2004. The claimant participated on her own behalf. The employer participated by Store Manager Karen Hildebrand.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Robin Carter was employed by Casey's from June 17, 2003 until October 1, 2004. She was a full-time cashier.

On September 3, 2003, the claimant had received a written warning regarding absenteeism. The warning notified her that if she missed any more work due to illness, she would have to provide a doctor's excuse.

Ms. Carter had requested to be off on the weekend of October 2 and 3, 2004. The request was granted. However, Store Manager Karen Hildebrand scheduled her for the evening shift on October 1, 2004, beginning at 4:00 p.m. The claimant was upset because she had not requested that day off but had planned to leave town after her husband got off work at 2:40 p.m. that afternoon. Arrangements were made to have another employee cover that shift, but on September 30, 2004, the other employee notified Ms. Hildebrand she could not take the shift after all because she had forgotten about a previous engagement.

The store manager notified the claimant on September 30, 2004, that she would have to work her scheduled shift the next day. Ms. Carter became angry and upset because she had planned to leave town at that time. When the employer told her that she was on the schedule and would have to work, the claimant became even more upset. After hanging up Ms. Carter immediately called the store and said she was calling in sick for her shift the next day, even though she was not, in fact, ill.

On October 4, 2004, the claimant called the manager and asked if she still had a job. A meeting was set for October 5, 2004, at which time Ms. Hildebrand asked Ms. Carter if she had a doctor's excuse. She did not and the manager told her she was fired.

The claimant acknowledged she was not, in fact, ill when she called in absent for her October 1, 2004, shift. However, she maintains her daughter became ill the next day and she would have missed work anyway. Although she alleged she took the child to a doctor, she did not get a doctor's excuse until October 5, 2004, four days after the absence. The claimant's husband could have cared for their child as he was off work before her shift started, but he elected to leave town without her.

Robin Carter has received unemployment benefits since filing a claim with an effective date of October 3, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant was discharged for missing work on October 1, 2004. Although she did notify the employer in advance she would be absent, it was nearly 24 hours before her scheduled shift and she admitted she was not, in fact, ill at the time she called in absent. She intended to be off work so she could begin her trip out of town earlier. This is misrepresentation and falsification of the reason for her absence. If Ms. Carter had wanted to leave town on October 1, 2004, she should have requested that day off in addition to the following two days, but she did not. The employer has the right to expect employees to work their scheduled hours and Ms. Carter's deliberate refusal to work due the shift interfering with her personal plans, is conduct not in the best interests of the employer. She is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of October 19, 2004, reference 01, is reversed. Robin Carter is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount provided she is otherwise eligible. She is overpaid in the amount of \$110.00.

bgh/s