

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAREN S STRAWHACKER**

Claimant

**APPEAL NO. 09A-UI-16516-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 10/04/09**

**Claimant: Respondent (2-R)**

Section 96.5(2)a – Discharge for Misconduct

Section 96.3(7) – Recovery of Overpayments

**STATEMENT OF THE CASE:**

Casey's Marketing Company filed an appeal from a representative's decision dated October 23, 2009, reference 01, which held that no disqualification would be imposed regarding Karen Strawhacker's separation from employment. After due notice was issued, a hearing was held by telephone on December 9, 2009. Ms. Strawhacker participated personally. The employer participated by Karen Fillinger, Area Supervisor.

**ISSUE:**

At issue in this matter is whether Ms. Strawhacker 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: Ms. Strawhacker began working for Casey's on March 18, 2008. She was last employed full time as a donut maker. She was discharged because of her attendance.

Ms. Strawhacker was absent without calling in on July 28, 2009. When she spoke to the employer on July 29, she indicated she had missed work because the recently discharged manager told her she had been discharged as well. She was notified that she had not been discharged and was verbally warned about not reporting her absences. She had already received a written warning regarding attendance on January 7, 2009.

Ms. Strawhacker's last day at work was September 24, 2009. She was scheduled to be at work at 4:00 a.m. on September 25 and 26. When she had not reported for work or called in by 5:30 a.m. on September 25, the store cashier called her. She had been up until approximately 3:44 a.m. attempting to reach the other donut maker to have her switch shifts. Ms. Strawhacker did not call to report her absence of September 26 until 5:30 a.m. She heard her alarm go off at 2:30 a.m. but did not call the employer to report her intended absence.

Ms. Strawhacker knew she was to call either Lisa Scott or Karen Fillinger if she was not going to be at work. Instead, she only tried to call the other donut maker to see if she could replace her on September 25 and 26. She was unable to reach the other donut maker on either date to arrange a replacement. She was notified of her discharge on October 2, 2009. Attendance was the sole reason for the separation.

Ms. Strawhacker filed a claim for job insurance benefits effective October 4, 2009. She has received a total of \$1,471.00 in benefits since filing the claim.

#### **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 she 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.

Ms. Strawhacker was absent without calling in on July 28 because she heard she had been discharged. Because the information came from her former manager, it was reasonable for her to believe it was true. Therefore, her failure to call or report on July 28 was in good-faith. However, the verbal warning she received should have been sufficient to put her on notice that she needed to report her absences. Ms. Strawhacker knew she was required to call either Ms. Scott or Ms. Fillinger if she was going to be absent. In spite of this knowledge, she did not call either of them on September 25 and 26. She was up and about in sufficient time to call the employer before the start of her shift on both dates and had a telephone available from which to call. Instead of calling the employer, she only attempted to reach a coworker to see if the coworker could replace her. She still did not call the employer when she found she was unable to reach the coworker. Given the fact that the cashier called her on September 25, Ms. Strawhacker should have known on September 26 that it was important to let the store know her intentions.

Because Ms. Strawhacker failed to timely report her absences of September 25 and 26, both absences are unexcused. Since she had received a written warning about attendance on January 7 and a verbal warning on July 29, she had to have known that continued attendance infractions could result in the loss of employment. Two consecutive unexcused absences after warnings are sufficient to establish excessive unexcused absenteeism, which is a substantial disregard of the standards an employer has the right to expect. As such, Ms. Strawhacker is not entitled to job insurance benefits.

Ms. Strawhacker has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

**DECISION:**

The representative's decision dated October 23, 2009, reference 01, is hereby reversed. Ms. Strawhacker was discharged by Casey's for misconduct in connection with her employment. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Strawhacker will be required to repay benefits.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs