

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITTANY C THARP
Claimant

APPEAL NO. 10A-UI-13001-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORE**
Employer

**OC: 01/10/10
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 10, 2010 (reference 04) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 1, 2010. Claimant participated. Employer participated through area manager Teresa Zuke.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a cashier/cook from February 23, 2010 and was separated from employment on May 13, 2010. Her last day of work was May 6, 2010. She called to report her absence on May 7 because of transportation issues. She was arrested for driving while suspended and lack of insurance and jailed in Cedar Rapids on May 7. She called on May 8, 9, 10, 12, 2010 and spoke with Curtis, John, and Nick because Zuke was not there when she called. She left messages that she was stranded in Cedar Rapids and was unable to get to work at the Casey's in Evansdale. She lived in Evansdale, Iowa and moved to Cedar Rapids after her separation. She relies on the bus for transportation to work searches.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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(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 determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984).

An employer is entitled to expect its employees to report to work as scheduled or to be notified as to when and why the employee is unable to report to work. The employer has established that the claimant was absent for five consecutive work days because of being in jail and a lack of transportation, which are considered unexcused absences. The final series of unexcused absences is considered excessive. Benefits are withheld.

DECISION:

The September 10, 2010 (reference 04) decision is modified without change in effect. The claimant was discharged from employment due to excessive, unexcused absenteeism. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs