

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCHANIECE D EGAN

Claimant

APPEAL NO. 11A-UI-15883-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/23/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 6, 2011, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 19, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Becky McVay participated in the hearing on behalf of the employer. The record was left open for the claimant to submit documents that she understood were included in the record. Those documents marked Exhibits A – F were sent to the employer for objections. No objections were received by February 6 and Exhibits A – F are entered into evidence. Exhibit One through Three are entered into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time as a sales associate for the employer from August 14, 2009, to September 23, 2011. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant received a warning for excessive tardiness on May 18, 2011, after being late several times in March and May 2011.

On September 16, the claimant had mechanical problems with her car that caused her to be 23 minutes late. She called to let the employer know she would be late. On September 19, 2011, the claimant was five minutes late for work. She started out for work and then realized she had forgotten her work smock and had to go back home.

The employer discharged the claimant for excessive tardiness on September 23, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The claimant had a legitimate reason for her lateness on September 16 and called in to notify the employer that she was going to be late. The five-minute tardy on September 19, 2011, was due to negligence in not making sure she had her uniform not deliberate misconduct.

DECISION:

The unemployment insurance decision dated December 6, 2011, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css