

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SAMANTHA ROBERTS

Claimant

APPEAL NO: 19A-UI-06458-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 07/14/19

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 5, 2019, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 6, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Kim Geopfert, Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Five were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time cashier/kitchen helper for Casey's from July 17, 2018 to July 10, 2019. She was discharged for attendance issues.

On August 13, 2018, the claimant received a verbal warning in writing for accumulating two absences since her start date of July 17, 2018 (Employer's Exhibit Two).

On February 19, 2019, she received a written warning for calling in and failing to cover her shift February 17 and February 18, 2019, and failing to communicate with management February 18, 2019 (Employer's Exhibit Three). The warning stated the claimant was required to contact management immediately upon knowledge she will be absent and another incident would result in another corrective action up to and including termination (Employer's Exhibit Three).

On June 5, 2019, the claimant received a verbal warning in writing after she agreed to cover a shift May 29, 2019, and left early without permission and texted the assistant manager June 2, 2019, to say she would not be in when employees are not allowed to communicate their absences by text message (Employer's Exhibit Four). The warning indicated another incident would result in a corrective action up to and including termination (Employer's Exhibit Four).

On June 30, 2019, the claimant called in and talked to the assistant manager. She said she sprained her ankle and could not be in to work. The assistant manager told the claimant to try to find a replacement worker. The claimant came in and completed a partial shift with no evidence of an ankle injury.

On July 3, 2019, the claimant was scheduled to work 10:00 a.m. to 3:00 p.m. in the kitchen. She stated she did not want to work that shift and then was a no-call/no-show for that shift.

On July 7, 2019, the claimant called in for her shift and said she was ill. The assistant manager told her to find a replacement and she would call the claimant right back. The assistant manager tried to reach the claimant the rest of the day but the claimant did not answer her phone.

On July 10, 2019, the employer issued the claimant a written warning and terminated her employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The standard in attendance cases is whether the claimant had an excessive unexcused absenteeism record. (Emphasis added). While the employer's policy may count absences accompanied by doctor's notes as unexcused, for the purposes of unemployment insurance benefits those absences are considered excused.

The claimant was told to find a replacement and the assistant manager would call her right back July 7, 2019, but the employer was unable to reach the claimant the remainder of the day calling into question whether the claimant was actually ill because she failed to answer her phone. The claimant did not have a good attendance record and the employer testified she was terminated

for her attendance and not because she failed to answer the assistant manager's repeated calls July 7, 2019. Therefore, because the final absence was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed. Benefits must be allowed.

DECISION:

The August 5, 2019, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn