

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER D MAZE

Claimant

APPEAL NO. 14A-UI-10723-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/21/14

Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated October 10, 2014, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on November 4, 2014. Claimant participated. The employer participated by Ms. Jerri Lynn Karr, Store Manager. Claimant's Exhibits 1, 2, 3, 4, and 5 were received into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jennifer Maze was employed by Casey's Marketing Company from April 2, 2014 until September 1, 2014 when she was informed by Jerri Karr that she had been "let go" because she had not notified her direct supervisor that she would be absent from work since August 17, 2014.

Because the employer considered that the claimant had been excessively absent during the short period of time that she had been employed by the company, Ms. Maze was informed in late July 2014 that the company considered her attendance unacceptable and the claimant would be required to provide a doctor's note to verify each day's absence thereafter. Ms. Maze was also specifically instructed that she must personally contact the store manager by calling her directly on her cell phone to report any impending absences.

Ms. Maze was employed as a part-time pizza maker for the company and generally was assigned to 15 to 30 hours of work per week. On August 17, 2014, Ms. Maze called in to report that she would not be reporting that evening because she was sore after being involved in a car accident. Although scheduled to work, the claimant did not report or notify the store manager, Ms. Karr, of her impending absences on August 18, 19, 22, 23 and 31, 2014.

Although the claimant had been specifically instructed to personally contact the store director, Ms. Karr, by telephone to report each impending absence, she had not done so. Claimant, on approximately two occasions, had called in but had not spoken to Ms. Karr as directed. Because Ms. Maze had not contacted her manager directly, the store manager was unaware of her status and unaware of the calls. During the September 1st conversation, Ms. Maze did not dispute the fact that she had not called in to her direct supervisor each day as required, and at that time the claimant had not submitted any medical documentation. Later, almost three weeks after the claimant was discharged, a doctor's note had been placed on Ms. Karr's desk excusing Ms. Maze from reporting to work from August 17 through 24, 2014.

It is the claimant's position that although she did not contact her store manager to report her impending absences, the absences had been reported by calling in to an assistant manager on August 17 and August 31, 2014. It is Ms. Maze's further position that she had instructed her "boyfriend" via text message to have him call in for her on August 18 and August 22, 2014. It is claimant's belief she was not scheduled to work on other days.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the employer has sustained its burden of proof in showing the claimant's discharge took place under disqualifying conditions. The employer has.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

In discharge cases the employer has the burden of proof to establish disqualifying misconduct on the part of the claimant. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, Ms. Maze had been absent from work on a number of occasions during the short period of time she had been employed by the company and, therefore, was warned in late July 2014 that the company considered her absences to be excessive. The employer, through its store manager, not only warned Ms. Maze at that time about her attendance but also reminded her and emphasized the company rule that required the claimant to personally contact her store manager via telephone each day to report each impending absence. The claimant was also advised she would be required to provide medical documentation for the days that she missed. The claimant was discharged on September 1, 2014 after the store manager concluded that Ms. Maze continued to be absent without personally notifying her each day as was required by company policy and the warning that had been previously served upon Ms. Maze. During the period between August 18, 2014 and September 1, 2014, Ms. Maze had been absent and had not spoken to the store manager throughout the entire period. It appears that on approximately two occasions the claimant had called in on days when she believed that the manager would not be present and at other times had relied upon her boyfriend to provide notification by text messaging the boyfriend to do so.

The administrative law judge concludes based upon the totality of the evidence in the record that the claimant's failure to follow the company's required notification policies on a daily basis showed a disregard of the employer's interests and standards of behavior the employer had a right to expect of its employees under the provisions of the Employment Security Law. The administrative law judge is cognizant that Ms. Maze maintains that she did not directly call her supervisor because of cell phone difficulties but finds that her testimony strains credibility. The claimant at times during the period in question personally called in but did so on days and times that she was aware that the store manager, Ms. Karr, would not be present.

The Supreme Court of the State of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) held that excessive, unexcused absenteeism is a form of job misconduct. The court held that the concept includes tardiness, leaving early, etc. but further held that absence due to illness or other excusable reasons are deemed excused if the employee properly notifies the employer. The administrative law judge concludes based upon the evidence in the record that the claimant's absences were not excused as she failed to

properly notify her employer as required by company policy and the warning that had been previously served upon her by her store manager.

Because the claimant was discharged under disqualifying conditions, unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated October 10, 2014, reference 01, is affirmed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs