

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIKA M GRUBBS**

Claimant

**APPEAL NO: 13A-UI-13011-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 10/27/13**

**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's November 15, 2013 determination (reference 01) that held her qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. The claimant participated in the December 16, 2013 hearing. Cinda Wright, the store manager, and Susan Bishop, an Equifax Solutions unemployment insurance specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in May 2013. She worked part time or an average of 20 to 26 hours a week. The employer requires employees to notify the employer two hours before a scheduled shift when an employee is unable to work as scheduled. Employees are supposed to talk to a manager when they are unable to work as scheduled. During her employment there were times when the claimant reported an absence she talked to a cashier, who answered the phone. The employer did not give the claimant any warning for talking to a cashier instead of a manager.

During her employment, the claimant received warnings for some attendance issues. In early October the employer gave her warning for notifying the employer on September 23 she would be 30 minutes late for work, but was actually two hours late. The claimant was late for work this day for health-related issues. The early October warning also included the claimant's September 30 and October 1 absences when she had to move to another apartment at the last minute. The claimant understood Wright had to approve any changes in the schedule. The claimant had agreed to work for another employee on October 14 or 15. The claimant did not realize Wright approved this change and assumed she was not authorized to cover another employee's shift and did not report to work. Wright authorized this schedule change and called the claimant 15 minutes after she should have been at work to cover a shift. When Wright

called, the claimant was in bed and indicated her foot hurt. Wright told the claimant to stay home and another employee covered the shift. On October 16, the employer gave the claimant a written warning for this no-call/no-show incident. The employer also warned the claimant that if she had another no-call/no-show incident, she would be discharged.

When the employer asked the claimant if there were any days she wanted to give up for a new employee, the claimant asked about Mondays or Fridays. Wright told the claimant she could not give away any Mondays. The next week the claimant called before 7:00 a.m. on Monday, October 28, to report she was ill and unable to work. The claimant did not feel well because her blood pressure was higher than it should be. She planned to go to the emergency room on October 28, if her blood pressure did not go down. The claimant has had high blood pressure issues before, but her doctor is in Iowa City. When the claimant stayed in bed and rested, she felt better and did not go to the hospital.

When the claimant was absent on October 28 and did not call back to talk to Wright, the employer made the decision to discharge the claimant on October 28. When the claimant came to work on October 29, the employer discharged her for excessive absenteeism.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(2) a. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant knew or should have known her job was in jeopardy when she received the October 16 written warning. The claimant previously notified cashiers when she was unable to work. The employer did not warn her that this was not acceptable or allowed when she was unable to work. The claimant's failure to personally talk to Wright on October 28 does not mean the claimant did not timely notify the employer that she was unable to work.

While Wright was justified in questioning the claimant's October 28 absence, she made the decision to discharge the claimant before she talked to the claimant. If the claimant had gone to the hospital on October 28, she could have easily proven she was ill and unable to work. Unfortunately, she did not do this.

Since the claimant's testimony is credible and the employer made the decision to discharge her before even talking to the claimant, the evidence does not establish that the claimant's October 28 absence was anything other than being unable to work because she did not feel well. The evidence does not establish that the claimant intentionally disregarded the employer's interests. The employer did not establish that the claimant committed work-connected misconduct. As of October 27, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 15, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of October 27, 2013, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css