

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SASHA CUPPLES**

Claimant

**APPEAL NO: 11A-UI-12976-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 08-28-11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 22, 2011, 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 October 24, 2011. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Roxie Anderson, 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/cook for Casey's from September 10, 2009 to September 1, 2011. The claimant was absent due to illness June 28, 2011; absent due to the illness of her son July 13, 2011; and absent due to personal issues July 14, 2011, and received a written warning for her absences July 22, 2011 (Employer's Exhibit One). The claimant was hospitalized from August 1 to August 8, 2011, and provided the employer with a doctor's excuse. On August 31, 2011, the claimant called in at 1:30 p.m. and stated she would not be able to work her scheduled shift at 2:00 p.m. because of personal issues and the employer prepared a termination statement and discharged the claimant September 1, 2011 (Employer's Exhibits Two and Three). The claimant's personal issues were the result of not having a home and living in a hotel until she ran out of money and then staying with her mom when allowed to do so.

**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:

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(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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant did have several absences, including eight days when she was in the hospital, all but the remaining two were the result of the illness of herself or her son. She was absent due to personal reasons July 14 and August 31, 2011, but did call in on both occasions. Under these circumstances, the administrative law judge finds that two unexcused absences does not constitute excessive unexcused absenteeism or intentional job misconduct as those terms are defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The September 22, 2011, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css