

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA M HAYNES

Claimant

APPEAL NO. 11A-UI-15973-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 11/06/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 5, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 17, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Joanie Grife, attorney at law. Lyn Hook participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part-time for the employer as kitchen worker from March 30, 2009, to October 1, 2011. Lyn Hook was the store manager.

The claimant injured her shoulder at work in January 2011 and she had surgery on April 20. She returned to work about two weeks after her surgery with light-duty restrictions. She was taking medication for shoulder pain. In August, she was assigned to work in the sub sandwich area on a night shift. She complained to Hook that the work was aggravating her shoulder and asked to move to a different job. She was not moved to a different job and remained primarily on the night shift in the sub sandwich area.

The claimant was late for work on September 25 because she misread the schedule. She fell asleep unexpectedly before her 5 p.m. shift on September 30 and reported to work about 2.5 hours late.

The claimant was allowed to work on September 30 and October 1. She was asked to come in on October 4 before her scheduled shift. Hook had her sign a written corrective action for her tardiness on September 25 and a discharge corrective action for her for tardiness on September 30. She had not been disciplined for tardiness before and did not have a problem with tardiness before these dates in September. The employer discharged the claimant due to reporting to work late on September 25 and 30.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

871 IAC 24.32(7) provides:

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.

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 based on the two instances of tardiness. No repeated negligence equaling willful misconduct in culpability has been proven.

DECISION:

The unemployment insurance decision dated December 5, 2011, reference 01, 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/kjw