

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KATHLEEN A DAISY
1726 – 13TH AVE SW
FORT DODGE IA 50501

CONOCO
2036 – 5TH AVE S
FORT DODGE IA 50501

Appeal Number: 04A-UI-12218-JTT
OC: 10/10/04 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant, Kathleen Daisy, filed a timely appeal from a decision of a representative dated November 8, 2004, reference 03, which held Ms. Daisy was not eligible to receive unemployment insurance benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on December 6, 2004. The claimant participated personally. The employer participated by Terri Brundage, Conoco Manager.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Daisy was employed as a part-time clerk at Conoco from August 3, 2004 until she was discharged by the Manager Terri Brundage on October 11, 2004 for failure to wear her work shirt on October 6 and missing an employee meeting on October 7.

On October 6, Ms. Daisy violated a known company rule by not wearing her Conoco shirt during her shift. Ms. Brundage had warned Ms. Daisy previously that the new owners expected the employees to wear their Conoco shirts during their shift and that the new owners would be stopping in on a regular basis to check on the store. This warning was given before Ms. Brundage had provided Ms. Daisy with two Conoco shirts. Ms. Daisy did not wear a Conoco shirt during her shift on October 6 because her shirts needed to be laundered.

On October 7, Ms. Daisy failed to attend a monthly employee meeting. Ms. Daisy had been aware of the meeting, which was scheduled for 3:00 p.m. or 3:30 p.m., but forgot about the meeting. Shortly before the time of the employee meeting, Ms. Daisy learned that her cousin had been involved in a car accident. Ms. Daisy knew that her cousin's immediate family was at work and that they were probably not aware of the accident. Ms. Daisy decided to go to the scene of the accident to be of support to her cousin. When Ms. Daisy arrived at the scene, she learned that the accident had only involved one vehicle, and that her cousin had left the scene prior to her arrival and the arrival of law enforcement. Ms. Daisy then went to her cousin's home to check on him, but her cousin was not there. Ms. Daisy did not locate her cousin. Ms. Daisy was scheduled to work later that day and did in fact work her scheduled shift.

On October 11, Ms. Daisy went to the store to check the new work schedule. Ms. Daisy was not on the new work schedule. As she left the store, Ms. Daisy noticed Ms. Brundage sitting in her vehicle in the store lot. A few minutes later, Ms. Daisy called the store and spoke with Ms. Brundage. Ms. Brundage indicated that things were just not working out, and that the owners had instructed her to terminate two employees—one of those employees being Ms. Daisy.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that Ms. Daisy was discharged for misconduct in connection with her employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Because Ms. Daisy was discharged, Conoco bears the burden of proving the discharge was for misconduct that would disqualify Ms. Daisy from receiving unemployment benefits. See Iowa Code section 96.6(2). Ms. Daisy's single unexcused absence does not constitute misconduct. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). Ms. Daisy's negligence in not wearing her Conoco shirt on October 6 does not constitute misconduct since there is no evidence that the negligence was recurrent in nature or that the failure to wear the work shirt indicated a deliberate disregard of Conoco's interests. See Henry v. Iowa Department of Job Service, 412 N.W.2d 731 (Iowa App. 1986). No disqualification may enter.

DECISION:

The representative's decision dated November 8, 2004, reference 03, is reversed. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.

jt/smc