

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESA M MATAYA
Claimant

APPEAL NO. 09A-UI-10359-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**Original Claim: 06/14/09
Claimant: Respondent (2-R)**

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 10, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 5, 2009. Claimant participated. Diana Aufenkamp, Store Manager, represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teresa Mataya worked for Casey's Marketing Company during two distinct periods. The most recent period of employment started in October 2007 and was at the employer's Ankeny Boulevard store in Ankeny. Store Manager Diana Aufenkamp was Ms. Mataya's immediate supervisor at that store.

Ms. Mataya started as a part-time donut maker. Ms. Mataya worked 3:00 a.m. to 2:00 p.m. on Saturdays and Sundays. Ms. Mataya performed other duties when she was not making donuts. Ms. Mataya subsequently added two day shifts, 9:00 a.m. to 2:00 p.m., to her work schedule.

In January 2009, Mr. Mataya became a full-time donut maker. Ms. Mataya's work hours became 3:00 to 9:00 a.m. four days a week and 3:00 a.m. to 2:00 p.m. one day a week. Ms. Mataya's days off varied.

On April 1, 2009, Ms. Mataya provided Ms. Aufenkamp with written notice that she would no longer perform the donut making duties effective 30 days from the notice. Ms. Mataya suffers from diabetes. Ms. Mataya is also a parent and has children at home. Ms. Mataya found she was not able to get to sleep until 10:00 p.m. because of her family's home activities. Due to the lack of sleep, Ms. Mataya was struggling with regulating her blood sugar. A doctor had not recommended that Ms. Mataya leave the employment and Ms. Mataya had not provided the employer with medical documentation to indicate a doctor had recommended she leave the

employment. Ms. Aufenkamp took Ms. Mataya's notice as notice that she was quitting the employment in 30 days.

At the end of April, Ms. Aufenkamp had not yet secured a new donut maker. On May 1, Ms. Mataya proposed to continue to perform the donut making duties on a part-time basis until the employer secured another donut maker. Ms. Mataya also proposed that the employer provide her with a couple of evening shifts per week. Ms. Aufenkamp acquiesced in this arrangement, but never scheduled Ms. Mataya for evening shifts. Another employee also performed the donut making duties on a part-time basis. Mr. Aufenkamp believed Ms. Mataya was just postponing her effective quit date. Ms. Mataya believed she was merely transitioning away from the donut making duties and associated hours of employment.

Ms. Mataya last performed work for the employer on June 13, 2009. During her shift, Ms. Mataya saw a help wanted sign in the window of the store. Ms. Mataya returned and informed Ms. Aufenkamp that she was quitting. Ms. Aufenkamp asked when Ms. Mataya's last day would be. Ms. Mataya indicated that June 13 would be her last day. Ms. Aufenkamp considered Ms. Mataya a good worker and did not want her to leave the employment.

On June 10, Ms. Mataya had contacted the manager of the Polk City Casey's about a part-time position at that store. That manager initially told Ms. Mataya that she needed to wait until former employees returned from college for the summer. That manager later indicated that she did not have a position for Ms. Mataya.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence indicates that on April 1 Ms. Mataya provided the employer with written notice that she would be leaving her donut-making duties. A reasonable person in Ms. Aufenkamp's position would have interpreted the written notice as a resignation notice. The weight of the evidence indicates that at the end of the 30 days, Ms. Mataya approached the employer about continuing in the employment until the employer had a replacement donut maker. Ms. Mataya proposed picking up evening shifts, but the employer did not have evening shifts for her. The weight of the evidence indicates that Ms. Mataya notified the employer on June 13 that she would be leaving that day. Ms. Mataya then left the employment. A reasonable person in the employer's position would conclude that Ms. Mataya had voluntarily quit the employment. The weight of the evidence establishes a voluntary quit, not a discharge from the employment.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The weight of the evidence in the record fails to establish that Ms. Mataya's medical condition necessitated that she leave the employment to avoid serious danger to her health. The quit was not upon the recommendation of a medical professional. The weight of evidence indicates that Ms. Mataya voluntarily quit the employment because her family life was such that she could not get enough sleep before reporting for work in the early hours of the morning. This was a compelling personal reason, but not good cause attributable to the employer. Accordingly, Ms. Mataya is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Mataya.

Workforce Development records indicate that Casey's was Ms. Mataya's only base period employer. Thus, it matters not whether the quit was from full-time or part-time employment.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be

required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's July 10, 2009, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw