

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDY K SHINN
Claimant

APPEAL NO. 11A-UI-01434-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

**OC: 12/19/10
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available for Work
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated February 2, 2011, reference 04, denying benefits December 19, 2010 upon a finding the claimant was not able to perform work due to an injury. After due notice, a telephone hearing was held on March 7, 2011. The claimant participated personally. The employer participated by Riea Searcy, Store Manager.

ISSUE:

At issue is whether the claimant was able and available for work and whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Cindy Shinn was employed by Casey's General Stores from July 15, 2010 until January 28, 2011 when she voluntarily quit employment. Ms. Shinn was employed as a part-time kitchen worker, averaging 30 or more hours per week. Ms. Shinn was paid by the hour. Her immediate supervisor was Riea Searcy, Store Manager.

On or about October 13, 2010 Ms. Shinn was injured at work and provided a doctor's note to the employer excusing her absence. On November 29, 2010 the claimant provided a doctor's note limiting her work to no lifting above her head. The employer chose not to assign Ms. Shinn to other available work at the facility that would have allowed her to perform her duties without lifting over her head but instead limited the claimant to approximately five hours per week unloading tote boxes from a company delivery truck. On some occasions the claimant left after completing her duties in less than five hours. Ms. Shinn requested to be assigned back to normal part-time hours, however, the employer did not do so due to the claimant's limitation that she could not lift above her head due to a work-related injury. After waiting a substantial period of time for the employer to increase her working hours, Ms. Shinn left employment because she could not economically justify continued employment working only five hours per week that were

made available to her by the employer. The claimant had requested to have her hours increased before leaving.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant is able and available for work and left employment with good cause attributable to the employer.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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.

The evidence in the record establishes that Ms. Shinn was able to perform her duties as of December 19, 2010. The claimant had been reduced with a light-duty limitation due to a work-related injury. Other positions were available within the employer that the claimant could have performed, however, the employer chose to limit the claimant's working hours to five hours per week. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

The claimant in this matter gave notice to the employer of her desire to have her working hours increased and there were job positions available within the facility that the claimant could have been assigned to without violating her light-duty limitation that was imposed due to a work-related injury. When the employer did not chose to increase the claimant's working hours after a substantial period of time had elapsed, Ms. Shinn reasonably concluded that her hours would not be increased in the foreseeable future and left her employment due to a substantial reduction in working hours available to her. Good cause for quitting has been established. Benefits are allowed providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 2, 2011, reference 04, is reversed. The claimant was able to perform work as of December 19, 2010 and was eligible for partial unemployment insurance benefits effective that date. The claimant's quitting employment effective January 28,

2011 took place with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant meets all eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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