

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY M ALLAN
Claimant

APPEAL NO: 12A-UI-09590-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/08/12
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 1, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant voluntarily quit his employment for reasons that qualify him to receive benefits. The claimant participated in the hearing. Casey Nieman, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in June 2011. When the claimant's employment ended he worked part time as a second assistant manager.

During his employment, Nieman talked to the claimant about his failure to contact her when he left before the end of his shift. On June 23, the claimant left work at 10:16 a.m., but was scheduled to work until 1 p.m. Before he left, he had completed all his tasks. The claimant left work early because his grandmother had a picnic planned and he wanted to be at the family picnic. The claimant did not call or notify Nieman to ask if he could leave work early or to let her know he was leaving work early.

On June 20, the claimant was working when Nieman had just gotten a pop and was walking behind him. The straw in Nieman's pop split. She was frustrated and said, "Homo". As soon as Nieman made the comment, she immediately realized she may have offended the claimant and apologized to him. She explained that she had uttered the comment to herself because a straw split. After she apologized, the claimant did not say anything to her or to Nieman's supervisor, who was at the store, when she made the comment.

On June 25, Nieman gave the claimant a written warning for leaving work early on June 23 without authorization. The claimant became upset and told Nieman he could not take this anymore, gave her his store keys and left the store. The claimant did not return to work.

The claimant established a claim for benefits during the week of July 8, 2012. He has filed for and received benefits since July 8.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5(1). When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6(2).

The law presumes a claimant quits without good cause when he leaves after receiving a reprimand. 871 IAC 24.25(28). The law also presumes a claimant quits with good cause when he leaves because of intolerable working conditions. 871 IAC 24.26(4).

The comment Nieman made on June 20 was insensitive, but she did not direct the comment to any person and immediately apologized to the claimant because he overheard it. Since the claimant did not report the comment to the claimant's supervisor who was at the store, the evidence indicates he accepted Nieman's June 20 apology. This isolated incident does not rise to the level of intolerable working conditions.

The facts also establish that after Nieman gave him a written warning for failing to notify her that he was leaving work early on June 23, the claimant became upset. Since Nieman had talked to him before about notifying her when he left work early, the written warning was not unreasonable. The claimant obviously became upset when he received the June 25 written warning. Even though his job was not in jeopardy, the claimant quit for personal reasons. His reasons for quitting do not qualify him to receive benefits. 871 IAC 24.27, voluntarily quitting a part time job, does not apply in this case because the claimant does not have wage credits from any other employer in his base period. As of July 8, 2012, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits he has received since July 8, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's August 1, 2012 determination (reference 01) is reversed. The claimant voluntarily quit his employment for personal reasons, but not for reasons that qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of July 8, 2012. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs