

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA LOVAN

Claimant

APPEAL NO: 13A-UI-11740-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/15/13

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit

871 IAC 24.25(21) – Dissatisfaction of the Work Environment

STATEMENT OF THE CASE:

The employer appealed a department decision dated October 10, 2013, reference 01, that held she voluntarily quit employment with good cause on October 10, 2013, and benefits are allowed. A telephone hearing was held on November 12, 2013. The claimant, and witness, David Jensen, participated. Margaret Highland, Store Manager, and witness, Alisha Weber, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

The issue is whether the claimant voluntarily quit with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant began work on October 31, 2012, and last worked for the employer as a part-time kitchen cook on February 1, 2013. Claimant went on a smoke break on February 1 and did not return to work. The store manager received a report about claimant leaving that she considers job abandonment.

Claimant told the store manager about a week before she left that she would be moving to Des Moines with her boyfriend, David Jensen. Claimant had complained to the store assistant manager about co-workers failing to help her in the kitchen, but not to the store manager.

Claimant received weekly unemployment benefits totaling \$178 for the two-week period ending September 28, 2013.

The employer representative faxed a written statement with documents in response to the department fact-finding notice with a name/telephone number to be called for the hearing. The representative did not receive a call.

REASONING AND CONCLUSIONS OF LAW:

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 24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge concludes that the claimant voluntarily quit employment without good cause attributable to the employer on February 1, 2013 due to job abandonment.

The claimant left work on a smoke break with no advance notice she was quitting, and made no attempt to directly contact the store manager about the reason for leaving. Claimant did not tell the store manager about issues she had with co-workers failing to help her and offered as a reason for leaving to move with her boyfriend.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an

overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge further concludes claimant is overpaid benefits \$178 for the two weeks ending September 28, 2013 due to the voluntary quit disqualification imposed in this decision.

The issue whether claimant is granted relief from repayment and whether the employer's account should be charged is remanded to claims.

DECISION:

The department decision dated October 10, 2013, reference 01, is reversed. The claimant voluntarily quit without good cause attributable to the employer on February 1, 2013. Benefits are denied until the claimant has worked in and is paid wages for insured work, equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The repayment for the overpayment and employer participation issue(s) is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs