

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

PAULA A CASEY
2048 WOODSON FRANKLI
JACKSONVILLE IL 62650

WALGREEN COMPANY
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-03346-RT
OC: 02-29-04 R: 12
Claimant: Respondent (1)

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 96.5-1 – Voluntary Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Walgreen Company, filed a timely appeal from an unemployment insurance decision dated March 22, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Paula A. Casey. After due notice was issued, a telephone hearing was held on April 14, 2004, with the claimant participating. Suzanne Hansen, Store Manager in Davenport, Iowa, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer, most recently as a full-time assistant manager, from July 11, 1988 until she voluntarily quit effective November 15, 2003. On November 3, 2003 the claimant informed the store manager, Suzanne Hansen, the employer's witness, that she was giving her two-week notice. This would be effective on or about November 15, 2003. The next day, November 4, 2003, the claimant submitted a written resignation. The claimant had been working at the employer's subject store in Davenport, Iowa, for three months prior to her separation. She had worked at other stores prior to that time. While the claimant was employed in the store in Davenport, Iowa, her workweek was Wednesday through the following Tuesday and she worked seven days on and seven days off, ten hours per day, or a 70-hour week. Under this arrangement, the claimant received overtime of ten hours. On or about November 3, 2003, the claimant learned that the employer was going to change the workweek from Sunday through Saturday, still seven days on and seven days off, but adding an additional one hour each day, for 11 hours a day, or 77 hours in a week. The effect of the change would also reduce overtime to four hours. The claimant expressed concerns to Ms. Hansen about these matters and indicated to her that she would have to quit if that change was implemented. Ms. Hansen said that that is what the district manager wanted and it would be implemented. The claimant quit. Pursuant to her claim for unemployment insurance benefits filed effective February 29, 2004, the claimant has received no unemployment insurance benefits, although she has filed for six weeks, from benefit week ending March 6, 2004 to benefit week ending April 10, 2004. Records show that the claimant reported vacation pay each of those weeks sufficient to nullify benefits, but the claimant only received 11 days of vacation pay. Vacation pay is not an issue before the administrative law judge at this time.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not.

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(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be

substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

The parties concede that the claimant left her employment voluntarily. The issue then becomes whether the claimant left her employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has met her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The testimony of both witnesses is remarkably similar. When the claimant began working at the Davenport, Iowa store her workweek ran from Wednesday through Tuesday and she worked seven days on and seven days off, ten hours per day, or a 70-hour week and generated ten hours of overtime. After three months on or about November 3, 2003, the employer decided to change the workweek from Sunday through Saturday, remaining seven days on and seven days off but adding one hour per day for each day worked, or 77 hours per week. The effect of this would be to cut the claimant's overtime to four hours at the same time that she was working seven hours more per week. The claimant complained to the employer about these matters and indicated that she would have to quit if the change was implemented. The change was implemented and the claimant quit. The administrative law judge concludes that the changes made to the claimant's work schedule of changing from a Wednesday through Tuesday workweek to a Sunday through Saturday workweek and further adding one hour per day of work is a substantial change in the claimant's contract of hire, which change was a willful breach of her contract of hire and it was substantial, involving changes in working hours and remuneration. A ten-hour day is a long workday, not to mention an additional hour, making an 11-hour workday. At the same time the claimant was being asked to work longer, her overtime was cut. Even the employer's witness, Suzanne Hansen, Store Manager, conceded that the change would reduce overtime hours.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily with good cause attributable to the employer because the employer willfully and substantially breached its contract of hire with the claimant and, as a consequence, the claimant is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The administrative law judge concludes that the claimant has received no unemployment insurance benefits since filing for such benefits effective February 29, 2004, although she has

filed for six weekly claims. Since the claimant has received no unemployment insurance benefits, she is not overpaid any such benefits and would not be overpaid any such benefits as a result of her separation from the employer herein. The administrative law judge notes that the claimant is shown as not receiving any benefits because of vacation pay for each of those six weeks, but the administrative law judge reaches no conclusion as to whether that is accurate, whether the claimant received vacation pay, or whether she is entitled to unemployment insurance benefits for those weeks, except as it relates to her separation from the employer herein. Since that separation was not disqualifying, the claimant is entitled to receive unemployment insurance benefits as a result of that separation, provided she is otherwise eligible. The claimant is not overpaid any unemployment insurance benefits.

DECISION:

The representative's decision of March 22, 2004, reference 01, is affirmed. The claimant, Paula A Casey, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. As a result of this decision and because she has received no benefits, the claimant is not overpaid any unemployment insurance benefits

dj/b