

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BARBARA J SAGE-KENNEDY**

Claimant

**APPEAL NO. 09A-UI-04975-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 02/15/09**

**Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's March 17, 2009 decision (reference 01) that concluded Barbara Sage-Kennedy (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 24, 2009. The claimant participated personally. The employer participated by Harmon Wright, Manager.

**ISSUE:**

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 31, 2008, as a full-time assistant manager. The claimant suffered a work-related injury on October 28, 2008. The employer did not send the claimant to a physician. She saw her family physician on October 29, 2008. The physician restricted the claimant from any work through January 8, 2009. The employer abided by the family physician's restrictions. On January 7, 2009, the employer sent the claimant to its physician. The employer's physician placed the claimant on restricted work from January 7 through February 11, 2009. The family physician placed the claimant on work restrictions from January 8 through April 15, 2009.

On February 11, 2009, the claimant saw the employer's physician. The physician released her to return to work without restrictions and told her to work through the pain. The claimant worked five hours on February 12, 2008, which was within the family physician's restrictions. The claimant was not scheduled again until February 16, 2009.

On February 16, 2009, the employer met with the claimant. The employer told the claimant she had to work outside of her family physician's restrictions or quit. The claimant resigned. On February 23 and March 3, 2009, the claimant saw the employer's physician. The employer's

physician told the claimant to follow the restrictions imposed by the claimant's family physician. These restrictions were given to the employer.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did not.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(36) 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:

(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

The claimant was injured while at work. The claimant's injury was the reason for her separation from employment. Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. Iowa Employment Security Commission, 248 N.W.2d 88 (Iowa 1976). The claimant's separation from employment was caused by her work-related injury and, therefore, good cause is attributable to the employer. The claimant is qualified to receive benefits, provided she is otherwise eligible.

**DECISION:**

The representative's March 17, 2009 decision (reference 01) is affirmed. The claimant voluntarily quit. Good cause has been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/pjs