**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRIS M ALDERMAN**
Claimant

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

**APPEAL NO. 11A-UI-05366-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 11/14/10**
**Claimant: Respondent (2-R)**

Iowa Code Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 13, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 17, 2011. Claimant participated. Melinda Brook represented the employer and presented additional testimony through Mallory Johnson. Exhibits One and Two were received into evidence.

**ISSUE:**

Whether Mr. Alderman separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Chris Alderman was employed by the Casey's store in Carlisle as a part-time cashier/pizza maker from April 13, 2010 until October 13, 2010, when he voluntarily quit. Mr. Alderman's immediate supervisor was Store Manager Melinda Brook. Assistant Manager Rebecca Wilkinson and Second Assistant Mallory Johnson also had supervisory authority over Mr. Alderman's employment. Ms. Johnson generally made Mr. Alderman's work schedule. Mr. Alderman was also a full-time student at DMACC while he worked for Casey's. Mr. Alderman provided the employer with multiple school schedules, some handwritten and some pre-printed. Ms. Johnson attempted to accommodate Mr. Alderman's class schedule when scheduling his work hours, but the multiple school schedules sometimes made it difficult to avoid scheduling Mr. Alderman for shifts that avoided his school schedule. The employer continued to be willing to work with Mr. Alderman to accommodate his class schedule.

Mr. Alderman last performed work for Casey's on October 12, 2010 and was scheduled to work the next day, 2:00 p.m. to 10:00 p.m. Mr. Alderman did not appear for the shift. Ms. Johnson made multiple attempts to reach Mr. Alderman by telephone before she was able to make contact with Mr. Alderman. Mr. Alderman told Ms. Johnson that he had a class and could not work. The employer's policy required that Mr. Alderman notify the employer three or four hours prior to the scheduled start of the shift if he could not appear for work. Mr. Alderman was aware

of the policy, but had not complied with it to notify the employer he could not work October 13. On October 13, Ms. Johnson told Mr. Alderman that he had to appear for the shift or find someone to cover it. Ms. Johnson told Mr. Alderman that he needed to speak with Store Manager Melinda Brook if he was unhappy with his schedule. Ms. Johnson and Ms. Wilkinson had both previously told Mr. Alderman this. Ms. Brook was at the store from 5:00 a.m. to 2:00 p.m. daily. Mr. Alderman had not taken meaningful and reasonable steps to contact or speak with Ms. Brook regarding his concerns with the work schedule. During the telephone call on October 13, 2010, Mr. Alderman told Ms. Johnson that he was not coming in and that he quit. Ms. Johnson did not say anything to Mr. Alderman during the telephone call to indicate that he was discharged from the employment. Ms. Johnson did ask Mr. Alderman, "What the fuck am I supposed to do?" But the profanity was limited to just that. Mr. Alderman did not appear for subsequent shifts and did not make further contact with the employer. The employer continued to have work available to Mr. Alderman.

Mr. Alderman did some painting as an independent contractor prior to working as Casey's, but had not been an employee of an employer since 2007 when he worked for Ramco Electric Company. In other words, Casey's is the sole base period employer for purposes of the unemployment insurance claim year Mr. Alderman established on November 14, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes a voluntary quit, not a discharge from the employment. The weight of the evidence establishes that the employer continued to be willing to accommodate Mr. Alderman's work schedule, but reasonably expected Mr. Alderman to take reasonable steps to contact his supervisor, Ms. Brook, if he had any unresolved concerns. This was the message Ms. Johnson conveyed to Mr. Alderman during the telephone call on October 13, 2010. Mr. Alderman did not do that, but quit instead. The weight of the evidence establishes that Ms. Brook was readily available between the hours of 5:00 a.m. and 2:00 p.m. While Ms. Johnson did tell Mr. Alderman that she expected him to appear for the shift or get someone to cover it, she did not tell Mr. Alderman that he would be discharged if he did neither.

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.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

When a worker voluntary quits for school, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24,25(26).

When a worker voluntarily quits due to dissatisfaction with the work hours, dissatisfaction with the work environment, or a personality conflict with a supervisor, the quit is presumed to be without good cause attributable to the employer. See 871 IAC 24.25(18), (21) and (22).

The weight of the evidence in the record establishes that Mr. Alderman voluntarily the employment due to dissatisfaction with the work hours, the fact that they sometimes conflicted with his class schedule, and in response to Ms. Johnson's expression of frustration. Mr. Alderman contributed to the problem and hindered its resolution by failing to take reasonable steps to resolve it with his supervisor, Ms. Brook, despite being informed repeatedly by the assistant managers that that was the way to resolve the matter. The evidence does not indicate any change in the conditions of the employment. While Ms. Johnson used a vulgar word when speaking with Mr. Alderman on the telephone, the weight of the evidence indicates that Mr. Alderman exaggerated the comment into much more than it was. The evidence does not establish intolerable or detrimental working conditions as a result of Ms. Johnson's profanity or anything else.

The weight of the evidence establishes a voluntarily quit without good cause attributable to the employer. Accordingly, Mr. Alderman is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is

otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Alderman.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27. Because Casey's was Mr. Alderman's sole base period employer, there are no other wage credits upon which reduced benefits might be based. Accordingly, Mr. Alderman is subject to the full reach of the disqualification.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The Agency representative's April 13, 2011, reference 01, decision is reversed.

The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs