

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NASTASSIA GOFF**

Claimant

**APPEAL NO: 12A-UI-13801-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

**CASEY'S GENERAL STORES**

Employer

**OC: 10/21/12**

**Claimant: Respondent (2/R)**

Iowa Code § 96.5-2-a - Discharge for Misconduct  
871 IAC 24.32(7) - Excessive Unexcused Absenteeism  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated November 7, 2012, reference 02, which held that Nastassia Goff (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 18, 2012. The claimant participated in the hearing. The employer participated through Manager Teresa Durlam. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**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 employed as a full-time kitchen clerk from February 2, 2011 through October 11, 2012. She did not call or return to work after that date even though the employer tried to reach her. After a couple weeks, the employer finally asked the claimant's husband to bring in her key and he did. Continuing work was available. The employer said they did everything they could to keep the claimant working because she was a good worker.

The claimant filed a claim for unemployment insurance benefits effective October 21, 2012 and has received benefits after the separation from employment.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant is not qualified to receive

unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code Sections 96.5-1 and 96.5-2-a.

The claimant worked on October 11, 2012 and failed to call or return to work after that date. She indicated that she sent a text message but the employer's policy does not allow employees to send a text message to report an absence. The claimant admits she did not contact the manager and the manager testified that she had not heard from the claimant.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to call or return to work after October 11, 2012. Due to numerous inconsistent statements, the claimant's testimony was less reliable than the employer's.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden. Benefits are denied.

Iowa Code § 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 § 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 could 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 unemployment insurance decision dated November 7, 2012, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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