

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMANTHA N PEEL
Claimant

APPEAL NO: 10A-UI-12606-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

OC: 07/18/10

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's Marketing Company / Casey's General Stores (employer) appealed a representative's August 30, 2010 decision (reference 01) that concluded Samantha N. Peel (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Michelle Wright appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 8, 2010. She worked part time as a weekend donut maker, regularly scheduled to work 4:00 a.m. to 2:00 p.m. on Saturdays and Sundays, and occasionally working a shift on Fridays. Her last day of work was February 12, 2010.

During the month the claimant worked for the employer she missed work several days, some which were called in as due to weather or transportation issues, and some which were no-call/no-shows. On February 6 the general manager, Ms. Wright, had given the claimant a documented verbal warning due to a no-call/no-show.

On February 13 the claimant called in an absence, but not until about two hours prior to the start of her shift, which was less than the time required by the employer. She indicated she would

not be in for work that date due to a sick child. Later that day she called Ms. Wright at home, and discussed with her the fact that she was looking to go back to school on a regular basis. Ms. Wright pointed out that the claimant was already having attendance problems without the additional obligations of school, and questioned whether the claimant could really do both, go to school and continue her job; she suggested that if the claimant was serious about returning to school, that perhaps she should simply focus on doing that. The claimant agreed that this was the better course of action, and that she therefore would not continue to work with the employer.

While Ms. Wright was frustrated with the claimant's attendance, she had not made a determination to discharge the claimant had she not decided to leave the employment, although she likely would have given the claimant a final warning for her attendance.

The claimant established a claim for unemployment insurance benefits effective July 18, 2010. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The representative's decision concluded that it was the employer's action or inaction which led to the separation and therefore the separation was treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee ceases reporting for work because of a belief she has been or will be discharged, but where the employer has not specified that the employee is discharged. 871 IAC 24.25.

While the claimant's job was in some jeopardy as of February 13, 2010 and additional future absences could have resulted in her discharge, the discharge decision had not been made; the claimant had the choice to attempt to continue working for the employer while attending school, or to leave the employment to focus on school. The claimant chose to leave to focus on school; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving work to focus on school is a good personal reason but is not one attributable to the employer. 871 IAC 24.25(26). The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law 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. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not

received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded to the Claims Section.

DECISION:

The representative's August 30, 2010 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 13, 2010, benefits are withheld until such time as the claimant has worked in and 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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