

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SUSAN K SMITH**  
Claimant

**APPEAL NO. 09A-UI-01442-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**  
Employer

**OC: 11/30/08 R: 02  
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Susan Smith filed an appeal from a decision of a representative dated January 27, 2009, reference 01, which denied benefits based upon her separation from Casey's Marketing Company. After due notice was issued, a telephone conference hearing was scheduled for and held on February 18, 2009. The claimant participated personally. The employer participated by Ms. Pat Hodgson, Store Manager.

**ISSUE:**

The issue in this matter is whether the claimant quit for 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: The claimant worked for this employer from November 27, 2007 until November 27, 2008 as a part-time convenience store worker. The claimant was paid by the hour. Her immediate supervisor was Ms. Pat Hodgson. The claimant had been hired to work daytime hours.

In July 2008, the claimant was "temporarily" moved to the night shift by her employer while the company trained a new assistant manager. The employer had represented to Ms. Smith that the transfer to night work was of a temporary nature only and that the claimant would soon be returned to her daytime shift. In spite of repeated requests by the claimant to be returned to the hours that she was hired to work, the claimant was required to remain on the night shift although there were approximately three daytime positions at the facility.

Ms. Smith left her employment after giving her employer one final opportunity to transfer her to days. A robbery had taken place at an adjoining business while the claimant was working on the night shift at Casey's Marketing Company and the robbery suspects had visited Casey's facility the same night. Because Ms. Smith was fearful of retaliation based on her cooperation with police, she made a final request to be transferred back to days. The employer again promised to look into the matter in future scheduling. The claimant believed that she had once

again been denied her request to return to the original shift she was hired for and left employment.

**REASONING AND CONCLUSIONS OF LAW:**

The question is whether the evidence in the record establishes that Ms. Smith voluntarily quit employment for reasons that are attributable to the employer. It does.

The evidence in the record establishes that Ms. Smith was hired to work daytime hours and worked in that capacity for an extended period of time. In July 2008 the claimant was requested to “temporarily “assume a night-time position while a new assistant manager was being trained. Five months later the claimant remained in the night-time position although she had regularly and repeatedly requested that she be transferred back to days per the agreement of hire. The claimant gave the employer a final opportunity to transfer the claimant back to her normal working shift after an adjacent business had been robbed and Ms. Smith was fearful of harm or retaliation by the robbers for her cooperation with police. When the employer could not promise or establish an effective date that the claimant would be returned to her position on days as agreed at the time of hire, Ms. Smith left her employment with the company.

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.

For the reasons stated herein, the administrative law judge concludes the claimant left employment with good case attributable to the employer. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated January 27, 2009, reference 01, is reversed. The claimant voluntarily quit the employment with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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