

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SARAH E DAVIS
15271 POPLAR AVE
MAPLETON IA 51034

CASEYS MARKETING COMPANY
D/B/A CASEYS GENERAL STORE
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-11079-RT
OC: 07-18-04 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Sarah E. Davis, filed a timely appeal from an unemployment insurance decision dated October 8, 2004, reference 05, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on November 5, 2004, with the claimant participating. Amanda Komarek was available to testify for the claimant but not called because her testimony would have been repetitive and unnecessary. Sara Luebbert, Supervisor, participated in the hearing for the employer, Casey's Marketing Company, doing business as Casey's General Store. This appeal was consolidated with appeal number 04A-UI-11080-RT for the purposes of the hearing with the consent of the parties. The administrative law judge

takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time store manager in the employer's Onawa, Iowa, location from May 17, 2004 until she voluntarily quit effective July 20, 2004, which was the claimant's last day of work. After July 20, 2004, the claimant was on a leave of absence because of her pregnancy. The claimant remained on a leave of absence until she notified the employer of her quit. The claimant never returned to work after going on her leave of absence. In the last part of August or the first part of September 2004 the claimant called the employer's witness, Sara Luebbert, Supervisor, and left a voice mail message stating that she was quitting because she was not happy with her job and that she had just had a baby and that she wanted to spend more time with her baby and her family. The claimant has never returned to the employer and offered to go back to work.

The claimant now testifies that she quit because she was receiving telephone calls while on this leave of absence from employees and the assistant manager. Specifically, the claimant complained about phone calls from other employees and the assistant manager about an underage employee drinking while on duty. The claimant simply referred these phone calls to Ms. Luebbert. Ms. Luebbert was apprised of this situation and performed an investigation but could not establish the allegations because everything was hearsay. The claimant reported directly to Ms. Luebbert. However, the claimant never expressed any concerns to Ms. Luebbert about any of these matters nor did the claimant ever indicate or announce an intention to quit if any of her concerns were not addressed. Whether the claimant specifically expressed concerns to anyone else in a position of authority is unclear. The claimant did speak to the assistant manager and a co-worker and Sue Allyn, a superior of Ms. Luebbert. The claimant merely spoke to Ms. Allyn when Ms. Allyn called the claimant because she noticed some phone calls being made to the claimant's number and was inquiring about it. The extent to which the claimant complained to Ms. Allyn about these matters is unclear. What is clear is that the claimant never indicated or announced an intention to quit to anyone in a position of authority if her concerns were not addressed by the employer.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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 24.25(20)(21)(23) provide:

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:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(21) The claimant left because of dissatisfaction with the work environment.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

The parties concede and agree that the claimant left her employment voluntarily. They seem to disagree as to the specific date of the voluntary quit. The administrative law judge concludes that the claimant voluntarily quit effective July 20, 2004, which was her last day of work. The claimant then went on a medical leave and never returned to work after going on the medical leave. It is true that the employer did not learn about the claimant's quit until the latter part of August or the first part of September 2004, but the administrative law judge concludes that in this case effectively the claimant quit July 20, 2004. The administrative law judge notes that the claimant filed for unemployment insurance benefits effective July 18, 2004. The issue then becomes whether the claimant left her employment voluntarily or quit without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The employer's witness, Sara Luebbert, Supervisor, credibly testified that she learned of the claimant's quit on a voice mail message in early September 2004 in which the claimant states that she is not happy with her job and that she has just had a baby and wants to spend more time with her baby and her family. Leaving work voluntarily for compelling personal reasons when the absence exceeds ten working days or because of family responsibility or serious family needs is not good cause attributable to the employer. Further, leaving work voluntarily because of dissatisfaction with the work environment is also not good cause attributable to the employer.

The claimant now testifies that she left her employment because while on this leave she was called by employees and the assistant manager. The claimant later stated that it was not the phone calls themselves but rather the fact that some of the phone calls related to an underage employee who was allegedly drinking while working. The claimant merely referred the individual caller to Ms. Luebbert. Ms. Luebbert investigated the matter but could not establish that the employee in question had been drinking. The administrative law judge concludes that the claimant has failed to demonstrate by a preponderance of the evidence that these phone calls were the reasons for her quit or that the phone calls made her working conditions unsafe, unlawful, intolerable or detrimental or that they subjected her to a substantial change in her contract of hire. At first the claimant said that she quit because of all of the phone calls but later equivocated and said it was only the phone calls related to the employee who was allegedly drinking at work. Concerning the phone calls in particular about the employee who was

allegedly drinking, the claimant simply referred those who called her to Ms. Luebbert and they did inform Ms. Luebbert who did an investigation and addressed the matter. The administrative law judge does not believe that these phone calls whether in general or about the employee in particular made her working conditions unsafe, unlawful, intolerable or detrimental. If the claimant was so concerned about the employee who was drinking, she could have returned to work as the manager and discharged that employee. The claimant had no real reasonable explanation as to why she did not do that.

More compellingly, the claimant never expressed any concerns about any of these matters to Ms. Luebbert nor did she ever indicate or announce to Ms. Luebbert an intention to quit if any of her concerns were not addressed by the employer. Ms. Luebbert was the claimant's direct supervisor and the claimant reported directly to her. Although the claimant testified that she did express some concerns about these matters, they were to the assistant manager and coworkers and they had no real authority to deal with the claimant's concerns. At one point the claimant testified that she had spoken to Sue Allyn and had expressed concerns to her but the administrative law judge is not convinced of that. The claimant testified that Ms. Allyn merely called the claimant to confirm the telephone number where some phone calls were made from the employer's location. What is clear is that the claimant never indicated or announced an intention to quit to anyone in a position of authority and in a position to address the claimant's concerns. The administrative law judge concludes that the claimant did not give the employer any reasonable opportunity to address any of her concerns prior to her quit.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily effective July 20, 2004, without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of October 8, 2004, reference 05, is affirmed. The claimant, Sarah E. Davis, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left her employment voluntarily without good cause attributable to the employer.

pjs/tjc