

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENRA JELLIS

Claimant

APPEAL NO: 16A-UI-09023-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 07/24/16

Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 9, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on September 7 and continued on September 26, 2016. The claimant participated in the hearing. Parm Marts, Store Manager; Millie Vreough, Area Supervisor; and Alisha Weber, Unemployment Insurance Consultant; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left her employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time clerk for Casey's from August 23, 2011 to July 27, 2016. She voluntarily left her employment after an argument with a co-worker, the manager, and the area manager.

On Monday, July 18, 2016, the claimant was working with co-worker Kelly, who was on register one. That register is responsible for turning on the gas pumps which involves pressing a button on the register. Kelly was away from the register doing other tasks when a customer pulled up for gas. The claimant, who was standing by the registers, told Kelly to turn on the gas and he told her to do so. The claimant stated, "No," and Kelly told her she was acting childish and immature for not turning the pump on. The claimant had traded shifts that day and was working with Kelly despite having an argument with him six months previously. They had worked together off and on since their disagreement. As far as the employer knew there were no further incidents.

On Tuesday, July 19, 2016, Manager Pam Marts arrived for work at 5:00 a.m. and the claimant immediately asked to speak to her. Ms. Marts met with the claimant in her office at the front of

the store with the door closed. The claimant recounted the events of the previous evening and said Kelly was "mean to her." She then began verbally attacking Ms. Marts by saying she could not believe Ms. Marts scheduled her to work with Kelly and it was Ms. Marts' fault. The claimant had not complained to Ms. Marts about Kelly since their prior problem and Ms. Marts believed the issue was resolved. The claimant was very loud and was yelling at Ms. Marts saying she did not have to listen to Ms. Marts because she was not a manager. Ms. Marts repeatedly tried to get the claimant to calm down but her efforts were not successful and the claimant continued yelling at her. Ms. Marts was concerned that customers and staff could hear the claimant and finally Ms. Marts asked the claimant to clock out and go home. The claimant left but called Ms. Marts two hours later and said she would like to take her vacation. Ms. Marts granted her request but the claimant did not know how many of her 35 vacation hours she was going to use. She did say she wanted to take vacation through the end of the week. She stated she would let Ms. Marts know Monday, July 25, 2016, whether she was returning to work at all.

On Wednesday, July 20, 2016, the claimant asked to meet with Area Manager Millie Vreough. They scheduled a meeting later that day and when she arrived Ms. Vreough and Ms. Marts were standing outside when the claimant started talking to Ms. Vreough about her complaints regarding Ms. Marts. The claimant said everyone in the store was "picking on" her and Ms. Marts was not taking care of the problems in the store. She brought up the incident with Kelly the day before and stated Ms. Marts did not do her job and it was because of Ms. Marts she took her vacation. The claimant said no one was doing their jobs and Ms. Marts did not take care of any of the situations in the store. After that meeting Ms. Vreough talked to Kelly about the gas pump incident because the claimant stated Kelly followed her around the store and was concerned she was going to tell her fiancé. Kelly denied that accusation and Ms. Vreough subsequently watched the surveillance video but did not see Kelly following the claimant.

On Thursday, July 21, 2016, Ms. Vreough met with the claimant and notified her of the findings of her investigation regarding Kelly. Ms. Vreough told the claimant the video did not show Kelly following her. Ms. Vreough had also talked to human resources about the claimant's allegations of harassment. Although the claimant had resigned by the time the investigation was completed, the employer determined her complaint was unfounded. The employer estimated out of the other 25 employees the claimant had issues with 15 of her co-workers. Other employees complained the claimant was bossy and constantly "rode them like she was the boss." Ms. Marts had told the claimant she was not the boss and pointed out the claimant was always concerned about what everyone else was doing. In May 2016 the two assistant managers asked to meet with Ms. Marts regarding the claimant's behavior as she did not recognize their authority and was aggressive when they asked her to do tasks. Additionally, the claimant was not patient with new employees and became exceedingly upset over small problems. The claimant received a written warning May 31, 2016, for her conduct, failing to listen to the two assistant managers, and acting unprofessionally. The claimant had told both assistant managers they were not her boss and she did not have to do what they said. During the July 21, 2016, meeting Ms. Vreough hoped to work out the issues involving the claimant but the claimant indicated she was not interested in continuing her employment after hearing the results of her investigation. Ms. Vreough brought a resignation form in case the claimant chose to resign. She asked the claimant if that is what she wanted to do and the claimant indicated she was resigning effective July 27, 2016.

The claimant has claimed and received unemployment insurance benefits in the amount of \$902.00 for the seven weeks ending September 10, 2016.

The employer sent written documentation provided by Alisha Weber, Unemployment Insurance Consultant. The documents submitted did not contain the name and telephone number of an employee with firsthand knowledge who could be contacted, if necessary, for rebuttal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant was dissatisfied with her co-workers and manager and refused to acknowledge the authority of Ms. Marts and her two assistant managers. The final incident occurred between the claimant and co-worker Kelly. While Kelly should not have called the claimant childish and immature, her behavior was certainly not professional or in the best interest of the employer. Kelly simply asked the claimant to turn on a gas pump at the register she was standing nearby when he was away from the counter and she refused. Her attitude and behavior in that situation, as well as her habit of telling other employees what to do and complaining about them frequently, did not produce a pleasant work environment for either the claimant or her co-workers or managers. While the claimant was dissatisfied with the work environment, the evidence indicates she was a major contributor to the poor working relationships between herself, other employees, and management.

Under these circumstances, the administrative law judge concludes the claimant has not demonstrated that her leaving was for unlawful, intolerable, or detrimental working conditions as those terms are defined by Iowa law. The claimant quit due to dissatisfaction with the work environment. Therefore, benefits are denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

- (1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if un rebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee

with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits.

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. In this case, the claimant has received benefits but was not eligible for those benefits. While there is no evidence the claimant received benefits due to fraud or willful misrepresentation, the employer did not participate in the fact-finding interview within the meaning of the law. 871 IAC 24.10 is very specific regarding the requirements an employer or its representative must meet if they do not personally participate in the fact-finding hearing. One of those requirements is to provide the name and telephone number of an *employee* with firsthand information who may be contacted, if necessary, for rebuttal. (Emphasis added). The written documentation submitted by the employer's representative did not contain that information. Consequently, the claimant's overpayment of benefits is waived as to the claimant and the benefits she has received to date, in the amount of \$902.00 for the seven weeks ending September 10, 2016, shall be charged to the employer's account.

DECISION:

The August 9, 2016, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant has received benefits but was not eligible for those benefits. The employer did not participate in the fact-finding interview within the meaning of the law. Therefore, the claimant's overpayment of benefits is waived as to the claimant and the employer account shall be charged for the benefits she has received to date in the amount of \$902.00 for the seven weeks ending September 10, 2016.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs