

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSIE M BERNACKI
Claimant

APPEAL NO. 11A-UI-00908-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 12/12/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated January 14, 2011, reference 01, which denied benefits based upon her separation from Casey's General Stores. After due notice was issued, a telephone hearing was held on February 24, 2011. The claimant participated personally. Although duly notified, the employer did not participate.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jessie Bernacki was employed by Casey's General Stores from April 2010 until September 11, 2010, when she left employment due to dissatisfaction with another employee. Ms. Bernacki worked as a part-time cook and was paid by the hour. Her immediate supervisor was the store manager. Ms. Bernacki left her employment because she believed that another kitchen worker was intentionally mis-rotating foods that Ms. Bernacki had prepared, making it appear that the claimant was not properly rotating the food stocks. Ms. Bernacki had complained to the store manager about the other worker's conduct. The claimant left employment when she believed that the manager had not acted quickly enough to rectify the situation.

At the time of the claimant's leaving, the claimant was not on warning or employment probation nor had the employer indicated that the company felt that Ms. Bernacki was at fault. Work continued to be available to the claimant at the time that she chose to leave.

It is the claimant's belief that she should be eligible for benefits based upon employment with a previous company.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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.

An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. See Polley v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

In this matter, Ms. Bernacki had indicated to the store manager that she believed the other employee was improperly rotating food stuffs that Ms. Bernacki had prepared. Although the employer chose not to take immediate action, the evidence in the record establishes that Ms. Bernacki's employment or job position were not in jeopardy. The claimant had not been warned or counseled about improperly rotating her prepared food.

871 IAC 24.25(6) provides:

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:

- (6) The claimant left as a result of an inability to work with other employees.

Based upon the application of the facts to the law, the administrative law judge must conclude the claimant left employment without good cause attributable to the employer. Benefits are withheld.

Section 96.7-2 of the Employment Security Law provides that benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

DECISION:

The representative's decision dated January 14, 2011, reference 01, is affirmed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until 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.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw