

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L OLSON

Claimant

APPEAL NO: 100-UI-02421-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/18/09

Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(2) – Move to Another Locality
871 IAC 24.25(37) – Resignation
Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.3-7 – Recovery of Overpayment

STATEMENT OF THE CASE:

The employer appealed a department decision dated November 6, 2009, reference 01, that held the claimant was not discharged for misconduct on October 20, 2009, and benefits are allowed. After a hearing on December 23, an ALJ issued a decision that disqualified the claimant who filed an appeal. The EAB issued an order on February 12, 2010 for a new hearing. A telephone hearing was held on April 6, 2010. The claimant participated. Curt Fox, Manager, participated for the employer. Employer Exhibits One and Two was received as evidence.

ISSUES:

Whether the claimant voluntarily quit with good cause attributable to the employer.

Whether the claimant was discharged for misconduct in connection with employment.

Whether the claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on February 26, 2009, and last worked for the employer as a full-time clerk on October 20. The claimant received the employer theft policy at the time of hire.

The claimant gave notice to Manager Fox on October 1 that she would be leaving employment on October 30 to move to another locality. The employer accepted the resignation and took her off the schedule after October 30.

Due to a short count of cigarette inventory and corresponding low sales, Manager Fox watched security videos of cash register sales for October 17/18. Fox observed the claimant canceling age restricted cigarette sales as a procedure to make a customer sale, and take the payment for herself. Fox confronted the claimant who after observing some security video admitted stealing \$100.00 or more for the past two weeks. The claimant was immediately discharged on October 20.

The claimant has received benefits on her current unemployment claim.

REASONING AND CONCLUSIONS OF LAW:

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(2) and (37) 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:

(2) The claimant moved to a different locality.

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The administrative law judge concludes the claimant voluntarily quit employment when she gave notice on October 1, 2009 that she was leaving to move, and the employer accepted her resignation.

The claimant quit without good cause attributable to the employer as of October 1, that is the date she gave notice, and the employer accepted her resignation.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The administrative law judge further concludes the employer discharged the claimant for misconduct in connection with employment on October 20, 2009 that is a disqualification in advance of an announced quit date of October 30.

The employer discharged the claimant prior to her proposed quit date of October 30 for stealing in violation of the employer policy. The employer testimony based on reviewing security video(s) coupled with the claimant admitting the offense disqualifies the claimant for the period from October 20 to October 30 that is her proposed quit date.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in

the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Since the claimant has received benefits on her claim, the administrative law judge further concludes the overpayment issue is remanded to Claims for a determination.

DECISION:

The department decision dated November 6, 2009, reference 01, is reversed. The claimant voluntary quit without good cause when she gave notice on October 1, 2009 she was moving, and the employer accepted her resignation. The employer discharged the claimant for misconduct on October 20, 2009 prior to her proposed quit date of October 30. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times her weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css