

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN M CARLSON
Claimant

APPEAL NO. 11A-UI-13973-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/25/11
Claimant: Respondent (4)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Casey's, filed an appeal from a decision dated October 12, 2011, reference 01. The decision allowed benefits to the claimant, Steven Carlson. After due notice was issued, a hearing was held by telephone conference call on November 16, 2011.

The claimant provided a telephone number to the Appeals Section. That number was dialed at 12:59 p.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section prior to the close of the record. By the time the record was closed at 1:14 p.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

The employer participated by Manager Stacy Miller.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Steven Carlson was employed by Casey's from October 28, 2009 until September 24, 2011 as a full-time assistant manager. On September 24, 2011, he left a written resignation on the desk of Manager Stacy Miller stating he was giving his two-week notice. He was quitting to move to another town. When he returned to work for his next scheduled shift on September 27, 2011, Ms. Miller informed him he would not be required to work the notice period and his resignation was accepted effective September 24, 2011.

Immediately prior to his resignation, the claimant contacted Area Supervisor Connie Sublette alleging Ms. Miller had thrown a stapler at him on September 22, 2011. The supervisor investigated and could find no supporting evidence of the assertion. Ms. Miller believes the accusation, as well as the claimant's decision to resign, was based in part on her discovery that he had tried to conceal the fact he had paid out a lottery winning of \$180.00 in violation of the store policy. The policy is not to pay out any winnings in excess of \$100.00.

Steven Carlson has received unemployment benefits since filing a claim with an effective date of September 25, 2011.

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) 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:

(2) The claimant moved to a different locality.

871 IAC 24.25(38) 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:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

The claimant quit in order to move to another locality. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer. His allegations of inappropriate conduct on the part of the manager have been denied and the claimant did not present any evidence in support of this accusation. There is no evidence of a hostile or detrimental work environment.

Because the employer ended Mr. Carlson's employment before the end of the notice period, he is eligible for benefits for the two-week period from September 25 through October 8, 2011. He is disqualified effective October 9, 2011.

DECISION:

The representative's decision of October 12, 2011, reference 01, is modified in favor of the appellant. Steven Carlson is eligible for benefits from September 25 through October 8, 2011. He is disqualified effective October 9, 2011.

The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw