

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINDY HIATT
Claimant

APPEAL NO. 10A-UI-06287-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/21/10
Claimant: Respondent (2-R)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 16, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 15, 2010. Claimant did not respond to the hearing notice instructions to provide a number for the hearing and did not participate. Blake Homewood, Area Supervisor, represented the employer. Exhibits One and Two were received into evidence.

ISSUE:

Whether Ms. Hiatt separated from employment or a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mindy Hiatt was employed by Casey's as a full-time cashier. Ms. Hiatt started the employment on August 4, 2009 and last appeared for work on October 30, 2009. Store Manager Jonathan Foffum was Ms. Hiatt's immediate supervisor. Ms. Hiatt ceased appearing for work after October 30, 2009. Ms. Hiatt was absent without notifying the employer on October 31 and November 1, 2 and 3. The employer's written attendance policy indicated that the employer would deem two days of no-call/no-show absences a voluntary quit. The policy was contained in the employee manual and Ms. Hiatt had acknowledged in writing that the employee manual had been and would be made available for her to review. The employer was in the process of training Ms. Hiatt to become an assistant manager when Ms. Hiatt ceased appearing for work.

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

When an employee is absent for three days without giving notice to employer in violation of company rule, the employee is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

The weight of the evidence establishes a voluntary quit without good cause attributable to the employer, not a discharge. The weight of the evidence indicates that there were four no-call/no-show absences before the employer deemed Ms. Hiatt to have voluntarily separated from the employer. Ms. Hiatt is disqualified for benefits until 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 employer's account shall not be charged for benefits paid to Ms. Hiatt.

Iowa Code section 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's April 16, 2010, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until 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 employer's account shall not be charged.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css