

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

TAMMY S CLARK  
1304 S 1<sup>ST</sup> ST  
KIRKSVILLE MO 63501

CASEY'S MARKETING COMPANY  
CASEY'S GENERAL STORE  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-05747-DT  
OC: 04/11/04 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's May 11, 2004 decision (reference 02) that concluded Tammy S. Clark (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 15, 2004. The claimant participated in the hearing. Pam Kelleher appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### FINDINGS OF FACT:

The claimant started working for the employer on July 20, 1999. She worked full time as a cashier in the employer's Ottumwa, Iowa store. Until October 16, 2003, she had worked a schedule of 9:00 a.m. to 4:00 p.m. Monday through Friday and every other weekend. She was off work after October 16 due to a work-related injury covered by workers' compensation.

The claimant's doctor released her for light duty in late February 2004; she returned to work on February 23, 2004 part-time with restrictions against lifting, bending, or twisting, including reaching above her head. Sometime after February 23, the claimant obtained a statement from her doctor to add allowing her to sit when needed. The claimant's doctor did not order that she only work five days in sequence, but the workers' compensation carrier determined that it would be best to have her work five four-hour days. The employer endeavored to schedule the claimant only when there was another employee at the store so that she did not have to do work outside her restrictions.

The claimant worked her four-hour shift most days between March 1 and March 11. She called in sick on her scheduled days after March 11 until March 16, when she called in and informed the assistant manager that she was quitting. She did not specify a reason at the time, but one reason she asserted for quitting was that the employer was not complying with her restrictions, specifically requiring her to reach above her head, such as to reach cigarettes, and not allowing her to sit when she needed to, such as on March 11 when she went outside to sit down and then got up to assist a customer, perceiving that Ms. Kelleher, the store manager, was not going to assist the customer. The claimant never noted to Ms. Kelleher or any other representative of the employer that she believed that the employer was not complying with the restrictions and that if the employer did not make the necessary accommodations to comply with the restrictions, she would quit.

The other reason given by the claimant for quitting was that she believed that Ms. Kelleher was planning to permanently drop her to a part-time status and did not really want the claimant to return. The claimant further believed this information regarding her employment status was confidential and that Ms. Kelleher had made comments on this information either to or in the hearing of other employees and customers. Ms. Kelleher denied making any comments regarding the claimant's status. The claimant did not confront Ms. Kelleher with her concern prior to quitting.

The claimant established a claim for unemployment insurance benefits effective April 11, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,449.00.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code Section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code Section 96.6-2. The claimant has not presented competent evidence showing adequate health reasons to justify her quitting. Even accepting the claimant's testimony that the work she was doing was outside her restrictions, before quitting she did not inform the employer of a work-related health problem caused by the work she was expected to do and did not inform the employer that she intended to quit unless the problem was corrected or reasonably accommodated. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

With regard to the claimant's other asserted reason for quitting, first, Ms. Kelleher denied making any statements regarding the claimant's employment status. No first-hand witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. The claimant relies exclusively on second-hand information purportedly from a former coworker and customers; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether those witnesses might have been mistaken, whether they actually observed the entire time, whether they are credible, or whether the claimant might have misinterpreted or misunderstood aspects of their statements. Under the circumstances, the administrative law judge finds the employer's first-hand

information more credible. Further, the claimant's concern regarding her belief that Ms. Kelleher had made statements about her returning part time do not rise to the level of good cause for quitting. The type of information described by the claimant as having been mentioned does not appear to have the type of confidentiality attached to it as, for example, a description of someone's medical condition or their financial status. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor is not good cause. 871 IAC 24.25(21), (23). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). Additionally, in order for a reason for a quit to be attributable to the employer, 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 to address or resolve the complaint. Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996), Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). The claimant did not provide this notice and opportunity to the employer. Benefits are denied.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

#### DECISION:

The representative's May 11, 2004 decision (reference 02) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 16, 2004, benefits are withheld until such time as 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. The claimant is overpaid benefits in the amount of \$1,449.00.

ld/b