

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

TRACEY HARMS
1584 NW 80TH ST
CLIVE IA 50325

CASEYS MARKETING COMPANY
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-01808-HT
OC: 01/16/06 R: 02
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Quit
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

The employer, Casey's General Store, filed an appeal from a decision dated February 11, 2005, reference 02. The decision allowed benefits to the claimant, Tracey Harms. After due notice was issued a hearing was held by telephone conference call on March 8, 2005. The claimant participated on her own behalf. The employer participated by Manager Shelly Richards.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Tracy Harms was employed by Casey's General Store from March 8, 2004 until January 6, 2005. She was a full-time assistant manager.

During the course of her employment, other employees had complained about the claimant being "short" and "brusque." The claimant also indicated she was not especially happy and told Manager Shelly Richards that she did not feel comfortable with the manager's relationship with another employee, Dawn. Ms. Harms felt the manager should be discussing personnel issues with her alone.

On January 6, 2005, the claimant called Ms. Richards and said she had a family emergency and needed to go home. The manager said she would drop her children off and come to the store, but it would take a few minutes. Shortly after that she received a call from Dawn who was very upset, saying that Ms. Harms had called and told her she had to come in immediately, but she could not come in to work because she had been drinking on her day off. Ms. Richards told her to stay home and proceeded to the store, but the claimant was already gone.

The manager called Ms. Harms on her cell phone to talk to her about the incident, and at that time the claimant said she "could not take it anymore," and that everyone was against her. Ms. Richards said she did not want her to quit and to think about it and let her know the next day. The claimant never said she did not intend to quit but ended the phone call. The next day the claimant did not come in to work and the manager called and asked her to bring back the keys.

Tracey Harms has received unemployment benefits since filing a claim with an effective date of January 16, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The claimant maintains she was discharged but the record does not support this. She did receive permission to leave on January 6, 2005, but was told she must wait for a replacement, which she did not do. When the manager contacted her about her leaving she became frustrated and said she could not take it any more. Ms. Richards said she did not want her to quit right away and at no time did the claimant maintain she was not quitting, only agreed to "think about it." The administrative law judge believes that the claimant did quit at that time because she never disagreed with the employer's assertion that she did quit.

She quit because she was basically frustrated and did not feel that she was being treated appropriately by the manager or the other staff. However, at no time did she indicate she would quit unless her concerns were addressed. This is required by the provisions of Swanson v.

EAB, 554 N.W.2d 294 (Iowa App. 1996). In addition, she had difficulty working with other employees and problems with her supervisor. These do not constitute good cause attributable to the employer under the provisions of 871 IAC 24.25(6) and 24.25(22). The claimant is disqualified.

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.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of February 11, 2005, reference 02, is reversed. Tracey Harms is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,476.00.

bgh/sc