

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

DAWN MERRICK
230 – 1ST ST
CHATSWORTH IA 51011

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-09412-DT
OC: 08/01/04 R: 01
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 – Voluntary Leaving
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's August 25, 2004 decision (reference 01) that concluded Dawn Merrick (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2004. The claimant participated in the hearing. Cheryl Sands 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.

ISSUE: Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on May 17, 2000. She worked full time as a cashier in the employer's Akron, Iowa store. Her last day of work was July 30, 2004. She was scheduled to work July 31, August 1, August 3, and August 4. The claimant had been undergoing some personal problems over the past year, including the loss of a son and a divorce. She had been receiving counseling. On July 30 when she reported for work, she saw a memo posted on the board referring to a customer complaint regarding a cashier's attire being "sleazy" and advising clerks to not dress in the way described. The claimant recognized herself from the description and became further upset. She wrote a note to the store manager, Ms. Sands, indicating that she wished to take a leave of absence effective immediately through August 20, 2004, the period she calculated she had accrued in sick time and vacation time. She gave the note to the assistant manager and left. The assistant manager called Ms. Sands and informed her of the note.

Ms. Sands called the claimant's number yet on July 30 and left a message informing the claimant that the request for leave was denied and that she expected the claimant to be at work as scheduled the next day. Making reference to the claimant being upset over the memo regarding attire, Ms. Sands told the claimant to stop being such a "baby," and to stop playing games. She reiterated her expectation that the claimant be at work as scheduled on July 31, and that if the claimant had any questions, she was to call her. The claimant received the message but did not call Ms. Sands, being further upset about Ms. Sands' tone and comments in the message. She decided to still not report for work the next day. When the claimant did not report for work on July 31, Ms. Sands called again and told the claimant to call her. The claimant again did not call Ms. Sands, but did call and left a message for her immediate supervisor to call her. Her immediate supervisor was not available until August 2. The claimant also did not report to work as scheduled on August 1. On August 2 the claimant's immediate supervisor contacted the claimant and again indicated that the leave request had been denied and that the claimant's job would be in jeopardy if she did not have a medical excuse to justify her not returning to work as directed. The claimant indicated that she would try to get an excuse from her counselor, but the counselor would not be back in town until August 6. The supervisor indicated that this would be too long. The claimant did not report for work on August 3 or August 4, and on August 4 her supervisor informed her that she no longer had a job. The claimant had not been previously advised by her counselor to take any time off for medical or health reasons.

The claimant established a claim for unemployment insurance benefits effective August 1, 2004. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,128.00.

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 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 provides that, 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 claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out by refusing to return to scheduled work as directed. 871 IAC 24.25(27). The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

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. 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). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). 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). The claimant has not satisfied her burden. 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 August 25, 2004 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 31, 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 \$1,128.00.

ld/kjf