

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN M DAMRAU
Claimant

APPEAL NO. 11A-UI-10721-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CASEY'S MARKETING COMPANY
CASEY'S GENERAL STORES**
Employer

OC: 03/28/10
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 12, 2011 (reference 04) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 6, 2011. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a pizza maker from July 13, 2011 and was separated from employment on July 17, 2011. She quit because she did not think she was ready to work by herself after three days of training. She noticed that she was scheduled to work alone the next day and attempted to contact the manager about being scheduled alone and to ask for additional training but was unable to do so. A cashier helped her for awhile when they became extremely busy on her first day of work after training. She only had one opportunity to use the restroom and had no scheduled or unscheduled breaks that day and was not provided information about pizza specials offered to the public.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code § 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 24.26(2), (4) 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:

(2) The claimant left due to unsafe working conditions.

(4) The claimant left due to intolerable or detrimental working conditions.

Generally notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Board*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court recently concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

While it may be legal for employer not to give employees breaks, it does not resolve the issue of unsafe or intolerable working conditions. Fatigue due to long working hours, especially without a break in the shift, and insufficient training before being assigned to work alone, is reasonably well known in the lay community, and by reasonable person standards, to cause more errors in work duties and is more likely to result in illness or injury. Claimant's attempt to communicate her concerns to her immediate supervisor was sufficient to put employer on notice of her reasonable concerns. Thus, the separation was with good cause attributable to the employer.

DECISION:

The August 12, 2011 (reference 04) decision is reversed. The claimant voluntarily left the employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs