

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

JAMIE MARTS
132 S DAVIS
OTTUMWA IA 52501

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

Appeal Number: 04A-UI-11103-RT
OC: 09/26/04 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, 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 Quitting
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Casey's Marketing Company, doing business as Casey's General Store, filed a timely appeal from an unemployment insurance decision dated October 11, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Jamie Marts. After due notice was issued, a telephone hearing was held on November 5, 2004, with the claimant participating. Millie Reaves, Area Supervisor, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

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: The claimant was employed by the employer as a part-time cashier from July 9, 2004 until she separated from her employment on September 24, 2004. The claimant averaged between 12 and 25 hours per week. The claimant worked on September 23, 2004, which was her last day of work. On September 24, 2004, the claimant called the manager, Shelly Forney at approximately 9:30 a.m. and explained to Ms. Forney that she would not be able to work her shift, which started at 4:00 p.m. because she had to treat herself and her children for head lice. Ms. Forney told the claimant to try to find someone to work for her. The claimant tried, but was not able to find anyone to work for her. Ms. Forney called the claimant back at noon and the claimant told her that she was not able to find anyone to work for her. Ms. Forney told the claimant that she needed to be at work at 4:00 p.m. or she would not have a job. Ms. Forney then called the claimant back at 12:30 p.m. and offered to pay for the claimant's own treatment so that the claimant could come to work. The claimant refused saying that she needed her children treated as well. At 2:00 p.m., the claimant came into the employer's location and picked up her check because that was payday. The claimant then obtained the items necessary to treat herself and her children and did so at approximately 3:00 p.m. However, the claimant never returned to work that day. Later that day, the claimant spoke to the employer's witness, Millie Reaves, Area Supervisor, who told the claimant that there was really no reason for the claimant to leave her employment and that her job was still available if she wanted it. All she had to do was go back and talk to Ms. Forney. Ms. Reaves did not tell the claimant that she was fired or discharged but rather that she still had a job. The claimant had no real response to Ms. Reaves. The claimant never returned to work nor did she ever call Ms. Forney. The claimant had never expressed any concerns to the employer about her working conditions nor had she ever indicated or announced an intention to quit if any of her concerns were not addressed by the employer.

Pursuant to her claim for unemployment insurance benefits filed effective September 26, 2004, the claimant has received no unemployment insurance benefits. Records show that the claimant is disqualified to receive unemployment insurance benefits because of a disqualifying separation from a prior employer, Heartland Inn on April 22, 2004, by decision dated October 20, 2004, reference 02. This decision does not appear to have been appealed by the claimant. There is no evidence that the claimant has requalified to receive unemployment insurance benefits since this disqualifying separation. In order to requalify, the claimant would had to have earned ten times her weekly benefit amount of \$334.00 or \$3,340.00 since April 22, 2004.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was.
2. Whether the claimant is overpaid unemployment insurance benefits. She is not because she has received no such benefits.

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(20), (23), (28) provide:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

(23) The claimant left voluntarily due to family responsibilities or serious family needs.

(28) The claimant left after being reprimanded.

The first issue to be resolved is the character of the separation. The claimant maintains that she was discharged when she was told on September 24, 2004 that if she did not show up for her shift at 4:00 p.m. she would not have a job. The employer maintains that the claimant left her employment voluntarily when she failed to show up for work on and after the next scheduled day for her work, which would have been September 27, 2004. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant left her employment voluntarily. The employer's witness, Millie Reaves, Area Supervisor, credibly testified that later in the day on September 24, 2004, she specifically told the claimant by telephone conversation that there was no reason to leave her job and that her job was still available and that all she had to do was go back and talk to the manager, Shelly Forney. The claimant seems to concede this. Therefore, the evidence shows that work was and remained available for the claimant had she returned to work and talked to Ms. Forney. The claimant did not do so. The claimant testified that she did not do so because Ms. Forney was rude to her. The administrative law judge is not convinced that this was a good reason not to return to work when one needs a job. Further, the administrative law judge notes that the claimant herself testified that she began treating her children at about 3:00 p.m., but her shift did not start until 4:00 p.m. The claimant did not go to work for her shift even though it appears to the administrative law judge that the children's treatments should have been completed. The claimant testified that it took a couple of hours to treat her children, but this is not really credible in view of the procedures for the treatment which is to wash hair and then wait 15 minutes, rinse, wash again and then comb out the lice. It appears to the administrative law judge that the claimant could have worked that day if she had wished. At most, the claimant could have come in a little late for her shift, but she chose not to do so. The administrative law judge is constrained to conclude here that the claimant's refusal to go to work on September 24, 2004 and then her refusal to return to work after being

specifically told that she still had a job both demonstrates an intention to terminate the employment relationship and is an overt act to carry out that intention as required for a voluntary quit by Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The administrative law judge specifically notes that the claimant was not unequivocally told that she was discharged at any time, but only if she didn't come to work at 4:00 p.m. for her regular shift on September 24, 2004. The claimant did not show up for her shift at that time and then later was told that she still had a job and again didn't show up for work. Accordingly, the administrative law judge concludes that the claimant left her employment voluntarily on September 24, 2004. The issue then becomes whether the claimant left her employment without good cause attributable to the employer.

The administrative law judge concludes that the claimant has the burden to prove that she has left her employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she left her employment with the employer herein with good cause attributable to the employer. The claimant did not go to work because she had to treat her children for head lice. As noted above, the administrative law judge believes that the claimant could have treated her children and still made it to work. In any event, leaving work voluntarily for compelling personal reasons when the period of absence exceeds ten working days or because of family responsibility or serious family needs is not good cause attributable to the employer. More compelling, the administrative law judge concludes that what really occurred here was in the nature of a reprimand by the employer and leaving work voluntarily because of a reprimand is not good cause attributable to the employer. The administrative law judge does not believe that the statements by Ms. Forney are sufficient to establish that the claimant's working conditions were unsafe, unlawful, intolerable or detrimental or that she was subjected to a substantial change in her contract of hire. It appears to the administrative law judge that the claimant was angered by the fact that she needed to return to work and decided not to return to work and this is not good cause attributable to the employer. There is no evidence that the claimant ever expressed any concerns to the employer about her working conditions nor is there any evidence that the claimant ever threatened or announced an intention to quit if any of her concerns were not addressed by the employer.

In summary, and for all the reasons set out above, the administrative law judge concludes that the claimant left her employment voluntarily on September 24, 2004, without good cause attributable to the employer, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

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 administrative law judge concludes that the claimant has received no unemployment insurance benefits since separating from her employer on or about September 24, 2004 and filing for such benefits effective September 26, 2004. Because the claimant has received no unemployment insurance benefits she is not overpaid any such benefits. The administrative law judge notes that the claimant is also disqualified to receive unemployment insurance benefits as a result of a disqualifying separation from a prior employer on April 22, 2004, by decision dated October 20, 2004, reference 02, which decision has not been appealed.

DECISION:

The representative's decision dated October 11, 2004, reference 01, is reversed. The claimant, Jamie Marts, is not entitled to receive unemployment insurance benefits, until or unless she requalifies for such benefits, because she left work voluntarily without good cause attributable to the employer. Since the claimant has received no unemployment insurance benefits she is not overpaid any such benefits.

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