

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMARA K WILEY
Claimant

APPEAL NO. 16A-UI-12920-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 10/30/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Tamara Wiley filed a timely appeal from the November 30, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Wiley had voluntarily quit on November 2, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on December 21, 2016. Ms. Wiley participated and presented additional testimony through Tony Wiley. Tamara Weideman represented the employer and presented additional testimony through Stacie Hansen. Exhibits 1 through 5, A, D through G were received into evidence.

ISSUE:

Whether Ms. Wiley's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tamara Wiley was employed by Casey's as a full-time Second Assistant Manager at a Casey's store in Atlantic from October 3, 2016 until November 2, 2016, when she voluntarily quit the employment. Ms. Wiley's immediate supervisor was Tamara Weideman, Store Manager. Stacie Hansen was the Area Supervisor above Ms. Weideman.

On November 2, 2016, Ms. Weideman discovered that Ms. Wiley attempted to surreptitiously record confidential conversations that took place in Ms. Weideman's office. Ms. Wiley had left her cell phone on Ms. Weideman's desk. Ms. Weideman accidentally spilled soda on the phone and opened the phone's cover to make certain she had not damaged the phone. Ms. Weideman immediately observed that the phone had a recording application running on the phone. Ms. Weideman observed that Ms. Wiley appeared to have made 50 recordings with the software application. Ms. Weideman took the phone to Ms. Wiley and told her that the phone needed to either be placed in the basket designated for employee cell phones that was located between the register and kitchen area or needed to be kept in Ms. Wiley's vehicle. Ms. Wiley took the phone to her vehicle. The weight of the evidence indicates that Ms. Wiley deleted the records at that time. Ms. Weideman contacted Ms. Hansen regarding the matter and Ms. Hansen reported to the store to further investigate the matter. Ms. Hansen and

Ms. Weideman summoned Ms. Wiley to the store office. Ms. Wiley denied having attempted to surreptitiously record conversations and offered to have Ms. Hansen review her phone. Ms. Wiley collected her phone and opened the recording application to show there were no recordings.

During the November 2 meeting, Ms. Hansen took breaks to consult with the employer's legal and/or human resources personnel. Ms. Wiley asked to leave work early so that she could consult with an attorney. Ms. Hansen denied the request and indicated that Ms. Wiley could consult with her attorney after the end of her shift. Ms. Wiley told Ms. Hansen and Ms. Weideman that she was not certain she wished to continue in the employment. At Ms. Wiley's request, the employer provided her with a resignation form. Ms. Wiley delivered a typed resignation letter, along with the completed resignation form.

Ms. Wiley's attempt to surreptitiously record confidential conversations in Ms. Weideman's office followed a reprimand that Ms. Weideman and Ms. Hansen had issued to Ms. Wiley on October 31, 2016 after they concluded that Ms. Wiley had engaged in an inappropriate conversation of a sexual nature with another employee.

Ms. Wiley's employment got off to an uneasy start after the employer erroneously had her sign an Illinois conditions of employment document that indicated she would receive a 30 minute break. When the employer learned of the error, the employer provided Ms. Wiley with the correct conditions of employment document.

Ms. Wiley had a number of other concerns during the employment. Ms. Wiley was concerned that other store employees balked at strictly complying with Casey's protocols. When Ms. Weideman and/or Ms. Hansen became aware of the concerns, they addressed the concerns.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.25(21) provides:

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:

- (21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(28) provides:

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:

(28) The claimant left after being reprimanded.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence establishes a voluntary quit that was without good cause attributable to the employer. The weight of the evidence establishes that Ms. Wiley brought a predisposition to overdramatizing and adding unnecessary intrigue to events and interactions to the employment. The weight of the evidence establishes that Ms. Wiley quit in response to the employer's discovery of Ms. Wiley's attempt to surreptitiously record confidential conversations, the employer's investigation of that matter, and in response to a recent reprimand regarding inappropriate conversation in the workplace. The weight of the evidence fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. The break policy issue was addressed early and did not factor in the decision to leave the employment. The concerns Ms. Wiley had about following Casey's policies were addressed by Ms. Weideman and/or Ms. Hansen when they became aware of the concerns. Ms. Wiley's inability to get along with other staff did not constitute intolerable and detrimental working conditions.

Because the evidence establishes a voluntarily quit without good cause attributable to the employer, Ms. Wiley is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Wiley must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The November 30, 2016, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to ten times her

weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs