

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SANDRA J JOHNSON
Claimant

APPEAL NO: 13A-UI-09588-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 07/21/13
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Overpayment of Benefits

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 14, 2013 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Vicki Ruden, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits and has been overpaid benefits she received between July 21 and September 21, 2013.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive benefits or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid benefits she received between July 21 and September 21, 2013?

Is the employer charged for the overpayment or is the claimant required to pay back the overpayment of benefits?

FINDINGS OF FACT:

The claimant started working for the employer in 2008. She worked full time. The employer understood the claimant had to move out of her house in Marcus and wanted to transfer to Sioux City where she planned to move. The claimant found a house in Cherokee and moved there. The claimant then wanted to transfer to Cherokee so she would not have to drive 20 miles to work.

The manager at the Cherokee store was gone for a period of time so the claimant did not know if she could transfer to the Cherokee store. She continued to work at the Marcus store until June 26, 2013.

On June 26 or 27, the claimant signed a paper indicating she was transferring to the Cherokee store. Ruden hired new employees to replace the claimant. The claimant thought she would be allowed to work at the Marcus location until she was transferred to the Cherokee store. When the claimant called Ruden about working, Ruden did not have any available shifts that the claimant could work. It was not until early or mid-July that the claimant learned she would not be transferred to the Cherokee store because a kitchen manager had already been hired.

On or about July 16, 2013, the claimant resigned so she could get her vacation pay. The claimant established a claim for benefits during the week of July 21, 2013. The claimant and the employer participated at the fact-finding interview. The claimant filed for and received benefits for the weeks ending July 27 through September 7 and 21, 2013. She received her maximum weekly benefit amount of \$207 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The employer did not initiate the employment separation. Instead, the claimant informed Ruden she had to quit working at the Marcus location because she had to move. Ultimately, the claimant moved to Cherokee and wanted to transfer to the Cherokee store, but the Cherokee manager did not have a position available for the claimant. While the claimant wanted to transfer, this did not occur. The employer did not guarantee she would be transferred.

The claimant quit and has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2). The claimant informed Ruden she was quitting because she had to move. Even though the claimant wanted to transfer to another store, Cherokee, the employer did not offer her a job in Cherokee. Before the claimant learned she would not be able to work at the Cherokee store, she informed Ruden she was transferring. Since the claimant informed Ruden on June 26 she was quitting, Ruden hired new employees to replace her.

The law presumes a claimant quits without good cause when she leaves to move to a different locality. 871 IAC 24.25(2). If the employer had offered a job in Cherokee that the claimant accepted, the claimant would be eligible to receive benefits. Iowa Code § 96.5(1)a. Unfortunately, the claimant only wanted to transfer, but was not offered a job in Cherokee.

The evidence establishes the claimant quit working at the Marcus store because she had to move from her Marcus home to Cherokee. The claimant wanted to work in Cherokee so she would not have to drive to Marcus. The claimant established personal reasons for quitting, but she quit for reasons that do not qualify her to receive benefits. As of July 21, 2013, the claimant is not qualified to receive benefits.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant has been overpaid \$1,656.00 in benefits she received between July 21 and September 21, 2013. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

DECISION:

The representative's August 14, 2013 determination (reference 02) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of July 21, 2013. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid \$1,656.00 in benefits that the claimant is required to pay back.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs