

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONNA L TURNER**  
Claimant

**APPEAL NO. 11A-UI-02244-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

**OC: 11/28/10**

**Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Casey's Marketing Company (employer) appealed a representative's February 15, 2011 decision (reference 01) that concluded Donna L. Turner (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 March 22, 2011. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Beth Rudock 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.

**FINDINGS OF FACT:**

The claimant started working for the employer on February 22, 2010. As of about mid-March 2010, she worked full-time as a donut cook. Her last day of work was November 17, 2010.

The claimant was scheduled to work on November 20, November 21, November 22, and to be at a mandatory food service meeting on November 24. On November 20 the claimant called another employee to ask that he cover her shift, as she was going out of town, possibly to deliver a horse. The other employee urged the claimant to call Ms. Rudock, the store manager, but she did not. She was then a no-call, no-show for her shifts on November 21 and November 22, and a no-call, no-show for the mandatory meeting on November 24. Ms. Rudock attempted to contact the claimant on at least November 22 and left a message, but the claimant did not return the call, nor did she respond to attempts by an assistant manager to contact her.

After the mandatory meeting on November 24, the claimant called Ms. Rudock to discuss bringing paperwork for some absences prior to November 17 due to dental surgery. Ms. Rudock then indicated that she had deemed the claimant to have abandoned her job under the employer's three-day no-call, no-show policy of which the claimant was on notice. The claimant did not offer an explanation for her absences or failure to call or respond to the attempts to contact her, other than to indicate that she had not believed she was scheduled to be at the mandatory meeting on November 24.

The claimant established a claim for unemployment insurance benefits effective November 28, 2010. The claimant has received unemployment insurance benefits after the separation.

### **REASONING AND CONCLUSIONS OF LAW:**

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless 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. However, an intent to quit can be inferred in certain circumstances. For example, a three-day no-call, no-show in violation of company rule is considered to be a voluntary quit. 871 IAC 24.25(4). The claimant did exhibit the intent to quit and did act to carry it out. 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 § 96.6-2. The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

**DECISION:**

The representative's February 15, 2011 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 24, 2010, 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 matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw