

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**REBECCA L RENN**

Claimant

**APPEAL NO. 10A-UI-17839-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 11/28/10**

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

Section 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated February 9, 2010, reference 01, that concluded the claimant resigned when she was forced to do so or be discharged. A telephone hearing was held on February 9, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Lisa Maley participated in the hearing on behalf of the employer.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked as a cashier-cook for the employer from March 6, 2009, to November 26, 2010. Lisa Maley was the store manager, and Alana Johnson was an assistant manager.

The claimant was scheduled to work on November 26, 2010, from 5:00 to 11:00 p.m. She was assigned to unload merchandise from the truck at the beginning of her shift. She and a coworker got into a verbal confrontation after she asked the coworker to help unload the truck and the coworker refused and got upset with the claimant and yelled at her. The claimant ended up calling Maley and leaving a message for her to call the store to resolve things. When Maley called back, the claimant was outside the store cooling off.

Johnson took the call from Maley. Maley asked to speak with the claimant, but when Johnson informed the claimant that Maley was on the phone, the claimant refused to come in because of the coworkers' treatment of her and wanted Maley to come to the store. Johnson then conveyed the message from Maley that if she did not act like a grown up and talk to her on the phone, she no longer had a job.

The claimant then said she was leaving, and turned in her smock and keys. The claimant left employment because she did not want to come into the store to because of the way the coworker had treated her. The claimant never returned to work.

The claimant filed for and received unemployment insurance benefits for the weeks between November 28, 2010, and February 5, 2011.

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

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. Maley gave the claimant a choice (1) either coming in the store and talk to Maley on the phone, or (2) she was no longer had a job. The claimant chose not to talk to Maley and did not have any justified reason for not doing so. She in fact had called Maley and left a message stating she needed to talk to Maley. The separation must be treated as a voluntary quit. No good cause attributable to the employer has been shown for quitting employment here. She never gave Maley a chance to resolve things as she would not talk to Maley—even though that would be the only way for Maley to know what action to take.

Alternative, even if the separation would be treated as a discharge based on Maley telling the claimant she no longer had a job if she did not talk to the claimant, I would conclude the discharge was for work-connected misconduct.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant acted unreasonably by refusing to talk to Maley and by leaving work at the beginning of her shift. This would be a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant.

The unemployment insurance law requires benefits to 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. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal 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 deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

### **DECISION:**

The unemployment insurance decision dated February 9, 2010, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise

eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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