

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SUSAN NELSON
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 22A-UI-13055-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/24/22
Claimant: Respondent (4R)

Iowa Code § 96.5(1) – Voluntary Quit from Employment
Iowa Admin. Code r. 24.1(113) – Separations

STATEMENT OF THE CASE:

On May 25, 2022, employer Casey's Marketing Company filed an appeal from the May 17, 2022 (reference 01) unemployment insurance decision that allowed benefits based on a determination that claimant voluntarily quit her employment with good cause attributable to the employer. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Thursday, July 14, 2022. Appeal numbers 22A-UI-13055-LJ-T and 22A-UI-13056-LJ-T were heard together and created one record. The claimant, Susan Nelson, did not appear and did not participate in the hearing. The employer, Casey's Marketing Company, participated through Jolynn Sinram, District Manager. The administrative law judge took official notice of the administrative record.

ISSUE:

Has there been a separation from employment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the employer on October 8, 2021. She worked full-time hours for the employer as a shift lead.

On April 22, claimant became upset after a coworker made an inappropriate comment to her. She reported the comment to Sinram several days later and said, "I think I am just going to be done." Sinram assured claimant she would investigate the situation and address it appropriately. Claimant then said she would reconsider her decision to quit. Sinram looked into the incident that occurred and ultimately issued coaching and corrective actions as appropriate. Following this, she reached out to the claimant to see if she would be returning to work. Claimant asked Sinram to leave her on the schedule and said she would be back to work.

Claimant's next scheduled shift May 1. Claimant did not report to work as scheduled on May 1 or the following day, May 2. When a member of the employer's management team, Tanner, reached out to her on May 2, claimant responded that she was traveling to see her daughter

who just had a baby. Claimant told Tanner to put her on vacation for a week, and the employer granted the claimant's request. Claimant's paycheck for the pay period of April 24 through May 7, provided for the fact-finding interview, reflects that she was paid for thirty-five hours of vacation. This paycheck shows claimant retained a balance of five hours of vacation.

Claimant was scheduled to return to work after this vacation. Sinram recalled that claimant did not immediately return. As of May 14, the date the employer submitted its fact-finding response, claimant remained a full-time employee with the employer.

Claimant last reported to work for Casey's on June 28, 2022. Her employment ended in July 2022. Claimant's eligibility for benefits based on that separation has not been determined by Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant has not separated from this employment.

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. 24.1(113) defines "separations" as follows:

All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

Here, there is no evidence in the record supporting a conclusion that claimant separated from employment on April 22, 2022. Sinram testified that while claimant did not immediately return after her week-long vacation at the beginning of May 2022, the employer did not discharge her

from employment. Claimant taking a full week of vacation and retaining a balance of vacation hours illustrates that claimant remained employed; the paycheck issued for the period ending May 7 was not a payout of all of claimant's vacation time. The evidence in the record leads the administrative law judge to determine that a separation has not occurred.

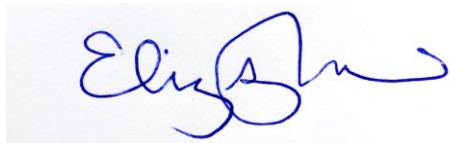
The issues of whether claimant's July 2022 separation is disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development.

DECISION:

The May 17, 2022 (reference 01) unemployment insurance decision is modified in favor of the employer/appellant without prejudice to either party. Claimant was not separated from this employment at any time prior to the issuance of the May 17 decision.

REMAND:

The issue of claimant's eligibility for unemployment insurance benefits based on her July 2022 separation from Casey's Marketing Company is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision with appeal rights.



Elizabeth A. Johnson
Administrative Law Judge

August 16, 2022
Decision Dated and Mailed

lj/lj

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.