

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE L HOCHSTETLER
Claimant

APPEAL NO: 08O-UI-01802-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 12/10/06 R: 03
Claimant: Respondent (2)

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 December 20, 2007 decision (reference 01) that concluded Jamie L. Hochstetler (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 6, 2008. The claimant participated in the hearing. Sue Madison 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.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer in about mid-September 2007. She worked full time as a cashier at the employer's Cedar Rapids, Iowa store, typically on a 3:00 p.m. to 11:00 p.m. shift. Her last day of work was November 26, 2007.

The claimant had been given some prior warnings for break times, cell phone usage, and tardiness, as well as concerns that she was not getting all of her tasks accomplished. On November 25 the claimant had been scheduled for a 7:00 a.m. to 3:00 p.m. shift. During the shift she worked with Ms. Madison, the store's assistant manager, and had asked Ms. Madison if she could leave early. Ms. Madison had told the claimant that she should not leave early, that she should work until 3:00 p.m. and work on finishing a number of duties that needed to be completed. Ms. Madison then left the store by at least 2:00 p.m. The claimant proceeded to work on projects when the new shift staff came in, but one of those clerks appeared to be disgruntled with the work the claimant was doing and told the claimant she could just go home. The claimant did not respond that Ms. Madison had specifically instructed her to stay until 3:00 p.m. and did not contact Ms. Madison for further direction, but proceeded to leave the store at approximately 2:30 p.m.

As a result of the claimant leaving early when she had been directed not to by Ms. Madison, when the claimant reported for work at 3:00 p.m. on November 26 she was given a write-up and three-day suspension. As part of the discussion the claimant expressed concern regarding how she felt other staff were treating her “snotty” and not speaking to her. The employer believed this related to the other staffs’ loss of respect for the claimant as the claimant had not been completing her duties, been tardy, been taking long breaks and using her cell phone, and told the claimant she would have to “earn back” the staffs’ respect. The employer promised to speak to the staff members to urge them to give the claimant another chance, which in fact they did after the claimant was sent home at approximately 4:00 p.m. November 26. However, after going home the claimant decided she was not going to return to the employer, and was a no-call, no-show for her next shift on December 2. When Ms. Madison called the claimant at approximately 3:10 p.m. on December 2, she confirmed to Ms. Madison that she was not coming back to work.

The claimant established a claim for unemployment insurance benefits effective December 10, 2006. She filed an additional claim effective November 25, 2007, and received benefits through the end of that claim year in the amount of \$29.00. Upon the expiration of that claim year the claimant established a second claim year effective December 9, 2007. The claimant has received unemployment insurance benefits in the current benefit year in the amount of \$1,496.00.

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 § 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did express or exhibit the intent to cease working for the employer 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. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a supervisor or coworkers is not good cause. 871 IAC 24.25(21), (23) (6). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer’s work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld

Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's December 20, 2007 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of November 26, 2007, 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 claimant is overpaid benefits in the amount of \$1,525.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs