

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTI R HERRILL
Claimant

APPEAL NO. 16A-UI-13310-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 11/20/16
Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Kristi Herrill filed a timely appeal from the December 13, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Herrill had voluntarily quit on May 8, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 6, 2017. Ms. Herrill participated. Joni Currin represented the employer. Exhibits 2 through 6 were received into evidence.

ISSUE:

Whether Ms. Herrill voluntarily quit the employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kristi Herrill was employed by Casey's Marketing Company as a part-time clerk at the Casey's store in Villisca from February 2016 until May 8, 2016, when she voluntarily quit. Joni Currin was and is Store Manager for the Villisca store. Ms. Herrill usually worked the evening shift, 4:00 p.m. to 11:00 p.m. Based on Ms. Herrill's preference to work in the kitchen, Ms. Currin scheduled Ms. Herrill to work in the kitchen making pizzas. The pizza cook duties included performing necessary prep work, receiving pizza orders by telephone, and making pizzas. The store usually had a second cook scheduled to make sub sandwiches. The two cooks were expected to assist each other as needed. The store also had a clerk or two running the cash registers.

On Sunday, May 8, 2016, Ms. Herrill was scheduled to work from 4:00 p.m. to 11:00 p.m. Because that day was Mothers' Day, the kitchen was busier than usual for a Sunday. Ms. Herrill was scheduled to make pizzas and Heather Fisher was scheduled to make sandwiches. During the shift, cashier Jessica Herring, telephoned Ms. Currin at home. Ms. Fisher told Ms. Currin that she needed to come to the store because Ms. Herrill was threatening to quit. Ms. Herrill was experiencing an emotional crisis based on her diagnosed mental health issues and based on problems in her relationship with her daughter. Ms. Herrill had been diagnosed with an anxiety disorder in October 2015 and had been placed on prescription medication to address the condition.

Ms. Herrill was upset about personal matters when arrived for work and started her shift on May 8. Soon after she arrived, she slammed a warmer door and complained when Ms. Fisher asked her to put condiments on a sandwich for a waiting customer. Ms. Herrill then took three pizza orders by telephone and commenced making the pizzas. During that time, Ms. Herrill complained that her daughter had not talked to her that day. Ms. Herrill then told Ms. Fisher that Ms. Fisher was the only one who helps her. Ms. Herrill told Ms. Fisher that she had been unable to get help from coworkers the previous evening, Saturday. Ms. Herrill told Ms. Fisher that she had had to take the telephone pizza orders and make 40 pizzas without assistance. That number was an exaggeration, but Ms. Herrill had needed to make 30 pizzas through the Saturday evening shift. Ms. Herrill also complained to Ms. Fisher that she had been unable to take a break until after 9:00 p.m. As Ms. Herrill continued to be upset while complaining about the previous evening shift, Ms. Fisher unsuccessfully attempted to calm Ms. Herrill. Ms. Herrill told Ms. Fisher that she could not "handle this" anymore. Ms. Herrill told Ms. Fisher that she was going to give everything away and move back to Spencer. Ms. Herrill is from Spencer. Ms. Fisher erroneously thought Ms. Herrill had said and meant that she was moving back to Stuart. Ms. Herrill told Ms. Fisher that Ms. Fisher needed to call someone, that she was done, that she was tired, that she was tired of her daughter treating her badly, that she was tired of no one helping her at Casey's, and that she wanted to go back home. Ms. Fisher began to help Ms. Herrill with making pizzas. Ms. Herrill started crying, began to yell, and stated that she was "done." Ms. Fisher took possession of the telephone pizza order list and asked whether Ms. Herrill meant that she was done for good or just done for the night. Ms. Herrill told Ms. Fisher that she could not "do this anymore," that she was done for good, that she was too old to do the job at Casey's, and that the job was too hard without any help. At that point, Ms. Fisher asked Ms. Herrill to call someone and further stated that Ms. Herrill had just quit. Ms. Fisher continued to help with pizza orders while she waited for Ms. Currin to arrive.

In response to the telephone call, Ms. Currin reported to the Casey's store. Travis Govig, Kitchen Manager, also reported to the store. When Ms. Currin arrived at the store, she asked Ms. Herrill what was going on. Ms. Herrill told Ms. Currin that there was "no cooperation" and that she couldn't "do this anymore." Ms. Herrill continued to yell. Ms. Herrill complained that her daughter would not talk to her. Ms. Herrill told Ms. Currin that she could "not take it," that she was going to move, and that she was sick and sore. Ms. Herrill asserted, incorrectly, that no one would help her that day. Ms. Currin asked Ms. Herrill whether she was quitting on the spot or whether was providing a two-week notice. Ms. Currin told Ms. Herrill that she needed to know what she was going to do. Ms. Currin provided Ms. Herrill with a resignation form. Ms. Currin had partially completed information on the form to identify Ms. Herrill as the employee in question, to identify the store, and to identify Ms. Currin as the supervising manager. Ms. Currin handed the form to Ms. Herrill. Ms. Herrill handed it back without adding to the form in the space provided for an explanation of the reason for the quit. However, on the back of the form or on a separate sheet of paper, Ms. Herrill wrote, "No team work!" Ms. Herrill signed and dated the note and provided it to Ms. Currin.

Prior to May 8, Ms. Herrill had not complained about the workload. Early in the employment, Ms. Herrill had asked to be scheduled for as many hours as possible. Ms. Currin attempted to accommodate that request. At the end of April, Ms. Herrill had asked not to be scheduled for more than three days in a row. However, at that point, Ms. Herrill was already on the schedule to work nine consecutive days. On the day Ms. Herrill quit, she was working the eighth day of that nine-day run.

After Ms. Herrill quit, she did indeed move back to Spencer.

Ms. Herrill established a claim for unemployment insurance benefits that was effective November 20, 2016. Casey's was the primary base period employer and the Casey's wages would have to be included in the claim in order for Ms. Herrill to be monetarily eligible for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.25(2) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(2) The claimant moved to a different locality.

Iowa Admin. Code r. 871-24.25(6) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

Iowa Admin. Code r. 871-24.25(21) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The

following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

On the other hand, quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record establishes a voluntary quit that was without good cause attributable to the employer. The weight of the evidence establishes that Ms. Herrill's decision to quit on May 8, 2016, was based on her personal issues, which included crises in her relationship with her daughter, emotional upheaval tied her to mental health issues, and a desire to move back home to Spencer. None of these issues were attributable to the employer. The weight of the evidence establishes that Ms. Herrill had a rough night at work on Saturday, May 7, 2016. On that night the kitchen was busy and Ms. Herrill had to perform the lion's share of the work without much assistance. With that said, one busy, demanding shift does not establish intolerable and/or detrimental working conditions that would prompt a reasonable person to quit. The weight of the evidence establishes that on the day Ms. Herrill actually quit, she had plenty of help. The weight of the evidence establishes that Ms. Fisher's written statement provides a reliable history of what took place on May 8. On that day, Ms. Herrill had the benefit of a coworker who was willing to assist and who did in fact assist her. In addition, the store manager and the kitchen manager demonstrated their concern by responding to the store when summoned. The evidence also establishes that the run of consecutive shifts at the end of the employment was based on Ms. Herrill's request to work as many hours as possible. At the time Ms. Herrill quit the employment, the employer had had minimal opportunity to respond to Ms. Herrill's end of April request to work no more than three shifts in a row. Under the circumstances, the run of shifts did not constitute intolerable and/or detrimental working conditions.

Because the weight of the evidence establishes a voluntarily quit without good cause attributable to the employer, Ms. Herrill is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Herrill must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Ms. Herrill lacks sufficient non-Casey's base period wages and wage credits to be eligible for reduced benefits.

DECISION:

The December 13, 2016, reference 01, decision is affirmed. The claimant voluntarily quit the employment on May 8, 2016 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs