

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTY M ORWIG**

Claimant

**APPEAL NO: 14A-UI-07318-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 06/22/14**

**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 11, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 8, 2014. The claimant participated in the hearing. Julie Shimon, Store Manager, and Alisha Weber, Unemployment Insurance Consultant, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant voluntarily left her 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: The claimant was employed as a full-time first assistant manager for Casey's from November 16, 2012 to June 23, 2014. She voluntarily quit her job because she did not like the work conditions.

The claimant submitted her two-week resignation notice June 11, 2014 with an effective date of June 23, 2014 and gave it to the employer who accepted her resignation. The claimant usually worked 1:30 p.m. to 11:15 p.m. and was responsible for doing the books every other weekend from 7:00 a.m. to noon. She told the employer on June 11, 2014 she did not want to work her scheduled weekend June 14 and 15, 2014 and the employer gave her a resignation form. On June 12, 2014 the claimant, Store Manager Julie Shimon, and District Supervisor Julie Sullivan met and Ms. Sullivan asked the claimant if there was anything the employer could do to entice her into retaining her employment and the claimant stated that she and Ms. Shimon agreed they could no longer work together.

The claimant volunteered to help train employees at one of the employer's new stores in North Dakota. She was gone April 8 through April 17, 2014 and the employer asked her to go back again May 18 and 19, 2014 and again May 27 through May 30, 2014. She told the employer May 30, 2014 that while she was in North Dakota she filled out an application for management and was offered the position but did not take it because her family did not want to move.

The claimant requested and was granted time off June 2 through June 4, 2014 while her child had surgery and the employer paid her for those days. June 7 and June 8, 2014 were the claimant's normal scheduled weekend days off. On June 11, 2014 when the claimant and Ms. Shimon were discussing the claimant's resignation notice the claimant expressed she was upset because she was scheduled for a split shift Saturday, June 14, 2014 her regularly scheduled weekend. Ms. Shimon reminded her that it was her turn to work the weekend and the claimant stated she had asked for that night off a few weeks earlier so she could attend a wedding. Ms. Shimon had not seen the claimant's request when she did the schedule and her child was graduating that evening so she could not work. She told the claimant she could see if someone else would switch with her and the claimant was upset and stated she did not request much time off and did not get it when she requested it. She then told Ms. Shimon she had a "shitty" attitude and said she was putting in her two-week notice. The claimant was able to find another employee to work for her that afternoon and evening.

The store manager, first assistant manager, and second assistant manager generally rotate who is scheduled to work on the holidays. The claimant complained she had worked every holiday since 2013. Ms. Shimon indicated the claimant stated she liked working holidays because of the overtime pay. The claimant was particularly upset she was scheduled to work a split shift on Christmas day.

Ms. Sullivan met with claimant and Ms. Shimon during the claimant's two-week notice period to try to work the situation out. The claimant complained about having to work all the holidays in 2014 and Ms. Sullivan told Ms. Shimon that they had to rotate holidays between the store manager, first assistant manager, and second assistant manager but the claimant and Ms. Shimon agreed they could no longer work together and the claimant's resignation stood.

The claimant has claimed and received unemployment insurance benefits in the amount of \$598.00 since her separation from this employer.

The employer participated personally in the fact-finding interview through the statements of Alisha Weber, Unemployment Insurance Consultant.

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

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without 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.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2.

The claimant was upset June 11, 2014 to learn that although she requested time off June 14, 2014 for a wedding, her request had not been granted. Ms. Shimon indicated to the claimant she did not see her request when making the schedule and she also had a significant event that night because her child was graduating. She suggested the claimant could find someone to work for her and the claimant was able to do so and attended the wedding but was still upset. That appears to be the proverbial last straw for the claimant.

While it would obviously be frustrating to be scheduled every holiday and several weekends in a row, the claimant did not tell Ms. Shimon she was unhappy to find herself scheduled every holiday since 2013 or that she was unhappy that, for reasons the claimant cannot recall, she had to work several weekends in a row after returning from North Dakota. Although she volunteered to go train employees in North Dakota the claimant felt the employer should have made allowances for her with regard to her scheduling and other matters when she returned from out of state the final time. If she felt Ms. Shimon would not address her concerns, however, she had the option of going to Ms. Sullivan to say she had issues with how she was being scheduled and, after the claimant submitted her resignation notice, Ms. Sullivan immediately held a meeting with the claimant and Ms. Shimon both present and told Ms. Shimon they had to rotate holidays.

Under these circumstances, the administrative law judge concludes the claimant has not demonstrated that her leaving was for unlawful, intolerable or detrimental working conditions that rise to the level of good cause attributable to the employer as that term is defined by Iowa law. Therefore, benefits must be denied.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the

employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

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. While there is no evidence the claimant received benefit due to fraud or willful misrepresentation, the employer participated in the fact-finding interview July 10, 2014, through the statements of Alisha Weber, Unemployment Insurance Consultant, and the documentation submitted by Ms. Weber. In this case, the claimant has received benefits but was not eligible for those benefits. The claimant's overpayment cannot be waived because the employer participated in the fact-finding interview. Therefore, the claimant is overpaid benefits in the amount of \$598.00.

**DECISION:**

The July 11, 2014, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she 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 has received benefits but was not eligible for those benefits. The claimant is overpaid benefits in the amount of \$598.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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