

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**RAINA M THORNTON
301 PRAIRIE
WEST BURLINGTON IA 52655**

**CASEY'S MARKETING CO
C/O TALX UC EXPRESS
3455 MILL RUN DR
HILLIARD OH 43026**

**Appeal Number: 05A-UI-03066-DWT
OC: 02/06/05 R: 04
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's March 14, 2005 decision (reference 03) that concluded Raina M. Thornton (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2005. The claimant participated in the hearing. Karen Fillingner, the area supervisor, 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.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on August 18, 2003. The claimant worked as a part-time cashier for about 30 hours a week. When the claimant worked, Carmen Kaufman was the store manager and the claimant's supervisor.

The claimant was pregnant and took maternity leave of absence as of November 1, 2004. The claimant understood she would receive six weeks of medical leave. The claimant's child was born on November 3, 2004. The employer discharged Kaufman in mid-November. Fillinger knew the claimant was pregnant but did not find any paperwork verifying she was on maternity leave.

In late December 2004, Fillinger tried unsuccessfully to contact the claimant on the claimant's cell phone to find out if she planned to return to work. An employee who knew the claimant reported that the claimant did not plan to return to work.

In late December 2004 or early January 2005, the claimant called the store to find out about the possibility of returning to work. Fillinger was not at the store when the claimant called. The employee who knew the claimant indicated there was no room on the schedule for the claimant. The claimant made no further attempts to personally contact Fillinger who managed the store at this time. Instead, the claimant started looking for other employment.

The claimant established a claim for unemployment insurance benefits during the week of February 6, 2005. She filed claims for the weeks ending February 12 through 26, 2005. The claimant received her maximum weekly benefit amount of \$123.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. Iowa Code §96.5-1-d states an employee will not be disqualified from receiving benefits if a claimant offers to return to work after the employer grants them a medical leave or maternity leave and the claimant's treating physician certifies the claimant is capable of returning to work without any restrictions. In this case, the claimant's maternity leave ended as of December 15, 2004. The claimant made no attempt to contact the employer in mid-December even though she had used her six weeks of maternity leave. While the claimant contacted the store and talked to an employee, she failed to take reasonable steps to talk to the person in charge of the store. The claimant's failure to contact the employer by December 19 in conjunction with her failure to take the necessary and reasonable steps to talk to Fillinger about returning to work established that the claimant did not intend to return to work for the employer. For unemployment insurance purposes, the claimant voluntarily quit her employment.

When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2. The facts do not establish that the claimant quit her employment for reasons that qualify her to receive unemployment insurance benefits. Therefore, as of February 6, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 12 through 26, 2005. The claimant has been overpaid a total of \$369.00 in benefits she received for these weeks.

DECISION:

The representative's March 14, 2005 decision (reference 03) is reversed. The claimant voluntarily quit her employment by failing to return to work at the end of her maternity leave. The claimant is disqualified from receiving unemployment insurance benefits as of February 6, 2005. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending February 12 through 26, 2005. The claimant has been overpaid and must repay \$369.00 in benefits she received for these weeks.

dlw/pjs