

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY T HERRIG
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 16A-UI-11758-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/17/16
Claimant: Respondent (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.25(27) – Quit Rather Than Perform Assigned Work
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the October 20, 2016, (reference 02) unemployment insurance decision that allowed benefits based upon a determination that claimant voluntarily quit employment because the working conditions were detrimental to her. The parties were properly notified of the hearing. A telephone hearing was held on November 14, 2016. The claimant, Mary T. Herrig, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Casey's Marketing Company, participated through Cece Halmus, second assistant; Vickie Pelsor, store manager; Jennifer Meyer, area supervisor; and Alisha Weber, Equifax Workforce Solutions Unemployment Insurance Consultant. Employer's Exhibits 1 through 4 were received and admitted into the record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a store employee, from May 12, 2015, until September 2, 2016, when she quit. Claimant last reported to work on September 2. That day, approximately six hours into her shift, she reported to Halmus that she was not feeling well and could not find anyone to come in and work for her. Halmus had a line of customers she was serving, and she was not able to immediately respond to claimant. Claimant then handed over her key, clocked out, and left the store. Claimant has not contacted the employer since that day. Halmus recalls that for some time prior to quitting, claimant had talked about wanting to

quit because she was tired of her job. Continued work was available to claimant, had she not voluntarily left her employment.

The administrative record reflects that claimant has received no unemployment since separating from this employer. Claimant's unemployment insurance claim has an original claim date of April 17, 2016, and she last filed a weekly claim for the week ending August 30, 2016. The administrative record also establishes that the employer did participate in the fact-finding interview by providing written documentation that, without rebuttal, would have resulted in disqualification.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant separated from her employment without good cause attributable to the employer. Benefits are withheld.

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 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: ...

- (27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Here, claimant left her employment after reporting that she did not feel well and could not find anyone to cover for her. This scenario is not necessarily disqualifying. However, when claimant left that day, she turned in her keys, demonstrating an intent to terminate her employment relationship. No one told her that she was required to stay and work while ill, and no one told her that she would not be discharged if she did not agree to stay at work. The claimant's decision to quit rather than wait for a response from Halmus was not for a good cause reason attributable to the employer. Benefits are withheld. As the administrative record showed that claimant has not received any benefits from this employer, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The October 20, 2016, (reference 02) unemployment insurance decision is reversed. Claimant separated from 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 issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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