

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDY K DONAHUE
Claimant

APPEAL NO: 13A-UI-07093-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/12/13

Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Wendy K. Donahue (claimant) appealed a representative's June 7, 2013 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 22, 2013. The claimant participated in the hearing. Tina Jennings 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:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on September 30, 2008. She worked part time (20 – 25 hours per week) as second assistant manager at the employer's Clarinda, Iowa store. Her last day of work was April 21, 2013.

The claimant frequently received complaints from other employees seeking her to intervene on their behalf with Jennings, the store manager. On the afternoon of April 22 another employee had asked the claimant to come with her to speak to Jennings, and the claimant did so, even though she was not scheduled for work that day. The claimant relayed the other employee's concerns regarding other employees not doing their jobs and not working their share of weekend shifts. The discussion became heated and loud on both sides. Toward the end of the conversation the claimant made the statement, "I'm done with this." She left shortly thereafter. Jennings understood her to have meant that she was quitting.

As the claimant was scheduled for an early morning shift on April 23 and Jennings had understood the claimant to have quit, after the claimant left Jennings began making arrangements to cover the claimant's shifts. Word of this got back to the claimant from the other employees who were being asked to cover the shifts. Just before midnight on April 22 the claimant called the overnight employee, who confirmed that the claimant's shifts had been covered; the claimant expressed to this overnight employee that she had not quit. The overnight employee also reported to the claimant that later on the evening of April 22 Jennings and the assistant manager had been speaking negatively about the claimant, stating that she had not been doing her job properly.

On the morning of April 23 Jennings learned from the overnight employee that the claimant had called and had stated that she had not quit. As a result, Jennings sent the claimant a text message indicating that if the claimant wished to discuss her job situation, she should come in for a conversation. Jennings was prepared to return the claimant to her job and her shifts. The claimant did receive the text message, but rather than speaking to Jennings, she called Jennings' supervisor, the area manager. She told the area manager also that she had not quit; the area manager also told the claimant that she should call Jennings and discuss the situation. The claimant determined not to call and talk to Jennings in part because she was upset that Jennings had assumed she had quit and given away her shifts, in part because she was upset that Jennings and the assistant manager had been talking about the claimant's job performance, and in part because she was upset that Jennings had only sent her a text message to come in for further discussion, rather than calling and speaking to her directly.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not “voluntary” as she had not desired to end the employment; she argues that it was the employer's action or inaction which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 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. The rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee believes they have been discharged but have not been told that by the employer. 871 IAC 24.25.

The claimant statement that “I am done with this” was at least ambiguous, and the employer reasonably interpreted that as a quit when it moved to fill the claimant's shifts. Upon learning that the claimant might not have intended to quit, the employer made some attempt to allow the claimant to come in for further discussion, but it was the claimant's choice not to seek to resolve

the situation. The claimant had the last clear chance to seek to preserve the employment, but opted not to do so; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2.

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 is not good cause. 871 IAC 24.25(21), (22). Quitting because a reprimand has been given is not good cause. 871 IAC 24.25(28). While the claimant's work situation was perhaps not ideal, she 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). Rather, her complaints do not surpass the ordinary tribulations of the workplace. The claimant has not satisfied her burden. Benefits are denied.

DECISION:

The representative's June 7, 2013 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of April 23, 2013, 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs