

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHANI S GIESE
Claimant

APPEAL NO. 11A-UI-01565-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 11/14/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated February 1, 2011, reference 01, which denied benefits based upon the claimant's separation from Casey's General Stores. After due notice was issued, a telephone hearing was held on March 8, 2011. The claimant participated personally. The employer participated by Ms. Jody Waters, store manager. Employer's Exhibits One through Six were received into evidence.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Stephani Giese was employed by Casey's General Stores from August 25, 2008, until November 2, 2010, when she voluntarily left employment by failing to return to available work. Ms. Giese held the position of full-time cashier/kitchen worker and was paid by the hour. Her immediate supervisor was Jody Waters.

Ms. Giese's last day on the job was on or about October 4, 2010. The claimant was off work due to medical reasons and provided a doctor's statement stating that the claimant was unable to work for medical reasons from October 2010 until November 1, 2010. Ms. Giese had been sent Family Medical Leave papers to be completed. The claimant, however, did not return the Family Medical Leave papers. However, the employer honored the doctor's statement, allowing the claimant to be away from work but expecting her to return after she was released by her physician. Ms. Giese was scheduled to work on November 2, 2010, but did not call, report, or notify the employer that she would not be reporting. When the claimant failed to return and provided no notification to the employer, the employer reasonably concluded the claimant had voluntarily relinquished her position with the company.

It is the claimant's position that she believed she had been "terminated" from employment and therefore did not return.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment voluntarily. It does. The additional question is whether the claimant left employment with good cause attributable to the employer. She did not.

Iowa Code section 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.

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Based upon the evidence in the record, the administrative law judge concludes that the claimant, Ms. Giese, requested and was granted an informal medical leave of absence from October 2010 until November 1, 2010. The claimant had submitted medical documentation indicating that she was authorized by her physician to return to work on or about November 1, 2010. Although the claimant was scheduled to return to work, the claimant did not return and provided no additional notification to the employer as to why she was not reporting. When the

claimant did not report back to work and provided no notification to the employer after she had been released to return to work by her physician, the employer reasonably concluded the claimant had chosen to voluntarily quit employment.

The claimant has the burden of proving that a voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of the reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. See Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993).

Inasmuch as the claimant did not give the employer an opportunity to resolve her complaints prior to leaving employment and the claimant did not return to available work after being released by her physician, the claimant's leaving was without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated February 1, 2011, reference 01, is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw