

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIMBERLY FOLKERDS
Claimant

APPEAL NO: 12A-UI-05818-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/15/12
Claimant: Respondent (1)

Iowa Code § 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated May 14, 2012, reference 01, which held that Kimberly Folkerds (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on May 8, 2012. The claimant participated in the hearing. The employer participated through Tammy Viet, Store Manager and Kevin Sinnwell, District Manager. Claimant's Exhibits A through E were admitted into evidence. 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:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time from April 20, 2006 through April 11, 2012 when she voluntarily quit due to intolerable working conditions. She began employment as a cashier/cook but has worked as the second assistant manager since November 1, 2007. She quit due to repeated harassment by Store Manager Tammy Viet. Ms. Viet criticized anyone who had to rely on food stamps and any kind of government assistance. She made derogatory comments on a social network which appeared to be directed to the claimant.

The manager told someone else that the claimant went to the "crotch" doctor. She made the statement in front of several customers, "Yeah her thing ya know down there is just rotting away so she went to the crotch doctor." The claimant had gone to the doctor after she found out she had cervical cancer.

The claimant was hospitalized in December 2011 for attempted suicide. The manager told people that the claimant was in the "Crazy Ward in Ames" and that she could not be a copy now because she will have illegal meth charges against her. When the claimant returned from the

hospital, she was restricted from working but the manager put her on the schedule on the following day.

The claimant's physician gave her an additional medical excuse taking her off work and the claimant repeatedly apologized to the manager. The manager sent the claimant a written response acting as if the claimant's inability to work was a personal attack. She said, "I understand that you have some problems, and I understand that you are close to hitting bottom, BUT I'm not the only one that has sat back and watched you explode. I can't cover your ass as Casey's no more. You will have to prove that your job is important to you, at this point I don't even know how much I can count on you??? I have never expected you to be PERFECT, and I have never JUDGED you, and you will never do either, but I will watch my back closer...I hope this is a wake up (sic) call. And I hope our friendship is worth repairing..."

The claimant told the manager that another employee reported that an employee spit on a pizza. The manager sent the claimant a text stating, "Funny...Miss tattletail Tina has not breathed a word about Miko spitting on pizza??? Kinda ironic I think!" The manager also sent the text, "I'ma thinking she's a liar big time."

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

The claimant quit her employment on April 11, 2012 due to intolerable working conditions. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The preponderance of the evidence confirms the store manager was repeatedly hostile, offensive and crude. There was also a strong indication the store manager violated the federal confidentiality policy regarding protected health information by disclosing the claimant's medical information.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has satisfied that burden and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 14, 2012, reference 01, is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer and is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs