

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES FEE**  
Claimant

**APPEAL NO: 11A-UI-03563-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 02/06/11**  
**Claimant: Appellant (4/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

**STATEMENT OF THE CASE:**

James Fee (claimant) appealed an unemployment insurance decision dated March 15, 2011, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Casey's General Stores (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2011. The claimant participated in the hearing. The employer participated through Peg Smith, Store Manager. Employer's Exhibits One and Two 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 his part-time employment qualifies him 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 as a part-time cook from September 17, 2008 through September 20, 2010. His last day of work was September 12, 2010 and he was next scheduled to work on September 17, 18, 19, and 20, 2010. The claimant was scheduled to work from 4:00 p.m. to 11:00 p.m. the first three days and from 10:00 a.m. to 2:00 p.m. on September 20, 2010.

The claimant failed to call before or show up for his shift on September 17, 2010. His friend called the employer during the scheduled shift and reported that the claimant could not work because he was in the emergency room. The claimant was a no-call/no-show on September 18, 2010 and on September 19, 2010. However, before his shift was over on September 19, 2010 he did go to the store and put a doctor's note on the employer's desk.

The claimant said nothing to the clerk that was working at the time and she saw it after he had left. The doctor's note excused him from work on September 17 and 18, 2010. There was no excuse for September 19, 2010. The claimant did not call before or show up for his shift on September 20, 2010. He went to the store in the middle of his shift and told the manager that he was not aware he was scheduled. The store manager stated that it was not her responsibility to make the claimant aware of his schedule. The claimant left without further discussion and never returned.

## **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits.

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.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit when he failed to report to work at the beginning of his shift on September 20, 2010. He carried out that intent when he failed to return to work after September 20, 2010. The claimant believed he had been fired but he was never told he was fired. Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without cause attributable to the employer. LaGrange v. Iowa Department of Job Service, (Unpublished Iowa Appeals 1984).

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code § 96.6-2. He has not met that burden and his separation from the employer is disqualifying.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or his maximum weekly benefit amount.

**DECISION:**

The unemployment insurance decision dated March 15, 2011, reference 02, is modified in favor of the appellant. The claimant voluntarily quit his part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what his maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/css