

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA A PORTER
Claimant

APPEAL NO. 12A-UI-07804-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/27/12
Claimant: Appellant (1)

Section 96.5-1 - Voluntary Quit

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 21, 2012, reference 01, that concluded she had voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 23, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Julie Sullivan participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked as a store manager for the employer from August 25, 2010, to May 20, 2012. She was informed and understood that under the employer's work rules, she was required to notify the area supervisor, Julie Sullivan, if she was not able to work as scheduled and would be considered to have voluntarily quit if she was absent from work without notice for two days. The claimant was warned on January 10, 2012, for missing work without notifying Sullivan.

The claimant was suffering from an abscessed tooth on the evening of May 20, 2012. She went to the emergency room that evening. She was treated and told to follow up with her doctor on the morning of May 21. She arranged for her assistant manager to cover her work shift on May 21. She called Sullivan at about 3:30 a.m. and left a message explaining what had happened and that her shift was covered for that day.

The morning of May 21 the claimant had arranged for a doctor's appointment but had to go to emergency room again before the appointment and underwent emergency oral surgery. She left a voice mail for Sullivan when she got home after the surgery stating that she would not be able to work on May 22, had a doctor's appointment that morning, and would update Sullivan after the appointment.

After her doctor's appointment on May 22, she again left a message for Sullivan stating that she would not be able to return to work until May 25 and would contact Sullivan after her doctor's appointment on May 24. She also requested Family and Medical Leave Act (FMLA) papers because she knew she was running short on paid leave.

The claimant had another procedure on May 24. She failed to contact Sullivan on May 24. Sullivan called the claimant on the afternoon of May 24 and left a message asking her to return the call so Sullivan would know what was going on. The claimant did not return the call. She did not call Sullivan right away in the morning of May 25 either.

Sullivan called the claimant on the morning of May 25 and left a message stating that because she had not heard from her on May 24 or 25, Sullivan assumed she was voluntarily quitting her employment. The claimant did not get this message right away.

The claimant saw her doctor at 10 a.m. on May 25 and he released her to return to work on May 26. Afterward, the claimant called Sullivan and left a message apologizing for not contacting her early. She stated she was released to work on May 26 and would pick up her keys from Sullivan's home store later that day. When Sullivan got the message, she returned the call immediately but had to leave a message for the claimant. In the message, she told the claimant that they needed to talk about her situation and provided the phone numbers of the stores she would be at that day.

In the afternoon on May 25, the claimant got the message Sullivan had left stating that Sullivan assumed she had voluntarily quit. The claimant did not contact Sullivan to let her know that her assumption was mistaken. Instead, she sent her boyfriend into the store to see if Sullivan had left her keys for her. When the boyfriend went into the store on the evening of May 25, the clerk got ahold of Sullivan. Sullivan told the boyfriend that he could not pick up the keys and Sullivan needed to talk to the claimant before she could be allowed to return to work.

The claimant's boyfriend informed the claimant about Sullivan wanting to talk to her. The claimant decided not to contact Sullivan and treat the phone message and the fact that Sullivan did not leave the keys for her to pick up as a sign that she had been discharged. The claimant in fact had not been discharged by the employer. The claimant had no further communication with the employer and quit employment by not returning to work based on an unreasonable assumption that she had been discharged.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe Sullivan's testimony that she said she assumed the claimant had voluntarily quit. The claimant's testimony that Sullivan said she was "voluntarily discharged" is not credible. "Voluntarily discharged" is an odd expression and I do not believe Sullivan used it. The claimant in fact failed to contact Sullivan on May 24 as she assured her that she would, so Sullivan had a reason to wonder what the claimant was intending. Once the claimant heard that Sullivan needed to talk to her—which she communicated to the claimant more than once after the Friday morning voicemail—the ball was in the claimant's court to continue the dialog regarding her employment status. When she failed

to do so after her boyfriend told her that Sullivan wanted to speak to her, the claimant dropped the ball, which is when she voluntarily quit her employment by not returning to work or contacting Sullivan.

DECISION:

The unemployment insurance decision dated June 21, 2012, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs