

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA KERANS

Claimant

APPEAL NO: 07A-UI-03304-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

**OC: 03/04/07 R: 03
Claimant: Respondent (4/R)**

Section 96.5-1 – Voluntary Quit
871 IAC 24.27 - Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed an unemployment insurance decision dated March 22, 2007, reference 01, which held that Lisa Kerans (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 18, 2007. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which she could be contacted, and therefore, did not participate. The employer participated through Brenda Dalbey, Manager. Based on the evidence, the arguments of the party, 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 her part-time 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 as a part-time kitchen/cashier from October 9, 2006 through March 3, 2007. She called in her absence on March 2 and was a no-call/no-show on March 3, 2007. The employer tried to reach the claimant that day but was only able to leave a message. The employer advised the claimant she was considered to have voluntarily quit and questioned the claimant as to when she would bring in her store key. The claimant never returned the call to the employer and never spoke to the employer when she brought in the key on March 4, 2007. If the claimant would have advised the employer she did not intend to quit, she would not have been terminated but would still be employed.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence indicates that the claimant quit the employment and was not discharged. The question for the administrative law judge is whether the claimant's quit was for

good cause attributable to the employer. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code section 96.5-1.

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 her intent to quit by not calling or reporting to work on March 3, 2007 but she carried out that intent when she returned the employer's key without comment. It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. The claimant failed to participate in the hearing and there is no evidence establishing her separation was with good cause attributable to the employer. She has not satisfied her burden.

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.

Since the claimant quit her part-time employment without good cause attributable to the employer, 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 her maximum weekly benefit amount.

DECISION:

The unemployment insurance decision dated March 22, 2007, reference 01, is modified in favor of the appellant. The claimant voluntarily quit her 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 her 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs