

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL D MCNEAR
Claimant

APPEAL NO. 13A-UI-11502-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/08/13
Claimant: Respondent (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 2, 2013, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits. After due notice was issued, a hearing was held on November 5, 2013. Claimant Randall McNear did not respond to the notice instructions to provide a telephone number for the hearing and did not participate. Treasure Small represented employer. The administrative law judge took official notice of the agency's administrative record (DBRO and Clear2There Hearing Control screen) that documents the claimant's failure to provide a telephone number for the hearing.

ISSUES:

Whether the claimant separated from the employment for reason that disqualifies him for unemployment insurance benefits for that release employer of liability for benefits.

Whether the employer's account may be charged for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Randall McNear was employed by Casey's as a part-time cashier/cook from January 2013 and last performed work for the employer on April 10, 2013. At that time Mr. McNear commenced an approved leave of absence so that he could participate in inpatient drug rehabilitation treatment through the Veterans Administration. The Veterans Administration provided the employer with documentation indicating that Mr. McNear entered treatment on April 12, 2013 and was discharged from the treatment program on June 7, 2013. Mr. McNear did not contact the employer about returning to the employment upon his discharge from the treatment program on June 7, 2013. The employer waited ten days, until June 17, 2013, to hear from Mr. McNear before the employer left a voicemail message on at Mr. McNear's cell phone number. The employer asked Mr. McNear for a return telephone call. A week later, Mr. McNear called the employer. At that time, Mr. McNear reported that he had hurt his knee and needed surgery. Mr. McNear indicated he had not made contact with the employer after being discharged from

the treatment program because he was dealing with his knee issue. Mr. McNear provided no other reason for failing to make contact with the employer after he was discharged from the treatment program or for his delay in responding to the employer's voice mail message of June 17, 2013.

The employer participated in the fact-finding interview that led to the October 2, 2013, reference 01, decision that allowed benefits.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

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. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, 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. 871 IAC 24.22(j)(2).

The weight of the evidence in the record indicates that Mr. McNear voluntarily quit the employment without good cause actionable to the employer by failing to return to the employment at the end of an approved leave of absence. The evidence indicates that the sole basis for the approved leave of absence was Mr. McNear's need to participate in inpatient drug treatment. Mr. McNear completed the treatment program on June 7, 2013 and then made no contact with the employer until about June 24, 2013. Mr. McNear's knee issue would not have prevented him from using a telephone to make contact with the employer within a reasonable timeframe after being discharged from the treatment program.

Because Mr. McNear voluntarily quit the employment without good cause attributable to the employer Mr. McNear is disqualified for benefits *based on base wages earned from Casey's* until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Because the employer participated in the fact-finding interview, the employer's account shall not be charged for benefits paid to Mr. McNear.

An individual who voluntarily quits *part-time* employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage

credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because the voluntary quit was from part-time employment, Mr. McNear remains eligible for unemployment insurance benefits *based on base period wage credits other than wages from Casey's* provided he meets all other eligibility requirements. This matter will be remanded to the Claims Division for redetermination of Mr. McNear's benefit eligibility based on base period wages other than wages from Casey's.

DECISION:

The agency representatives October 2, 2013, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The employer's account will not be charged for benefits. The claimant is disqualified for benefits *based on base period wages earned from Casey's* until he has worked in a been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged. The claimant remains eligible for reduced benefits based on base period wages from employers other than Casey's, provided he meets all other eligibility requirements.

This matter is **remanded** for redetermination of the claimant's eligibility for reduced benefits based on base period wage credits from employers other than Casey's. That redetermination may result in issuance of a decision that the claimant has been overpaid benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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