

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JUDITH A WINFREY
209 – 3RD AVE NW
HAMPTON IA 50441-1618

CASEY'S MARKETING CO
CASEY'S GENERAL STORE
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 06A-UI-04550-JTT
OC: 04/02/06 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Casey's filed a timely appeal from the April 19, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 16, 2006. Claimant Judith Winfrey participated. Store Manager Dave Myers represented the employer. Exhibits One through Four, and Exhibit A were received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Judith Winfrey was employed by Casey's as a full-time donut and pizza maker at the Hampton store for approximately three years until December 26, 2005, when she quit. On November 10, 2005, Ms. Winfrey applied for a leave of absence. The leave of absence was scheduled to

commence on December 29, 2005 and end on April 1, 2006. Ms. Winfrey wintered out-of-state and that was the purpose for the leave of absence. Store Manager Dave Myers approved Ms. Winfrey's request for a leave of absence on the same day. Mr. Myers provided Ms. Winfrey with written notice that the employer would not be able to guarantee her a full-time position upon her return. Mr. Myers further notified Ms. Winfrey that she should review the employer's written policy regarding extended leaves of absence. Ms. Winfrey did review the policy. The employer's written policy regarding extended leaves of absence is set forth in the employee handbook. Ms. Winfrey signed her acknowledgment of receipt of the handbook on May 1, 2002. The policy warned Ms. Winfrey that the employer could not guarantee that a specific position or wage would remain available for Ms. Winfrey upon her return to the employment. Despite being fully aware of the conditions of her leave of absence, Ms. Winfrey still intended to commence her leave.

The situation changed around Christmas, prior to the date on which Ms. Winfrey was to commence her leave of absence. On December 18 or 19, Mr. Myers posted the schedule that included Christmas Day. Casey's was open on Christmas day and Mr. Myers had scheduled Ms. Winfrey to work until 2:00 p.m. Ms. Winfrey had been scheduled to work the previous Christmas Day. When Ms. Winfrey observed the schedule, she told Mr. Myers that she was not going to work past 10:00 a.m. on Christmas Day. Mr. Myers told Ms. Winfrey that she would need to work to the end of her scheduled shift. On Christmas Day, Ms. Winfrey appeared and worked only until 10:00 a.m. Ms. Winfrey told Assistant Manager Kenneth Walker that he would have to find someone else to work to the end of the shift. Mr. Walker telephoned Mr. Myers later in the day to report the incident.

Ms. Winfrey appeared for her shift on December 26. She was scheduled to work 4:00 a.m. to 8:00 a.m. and 10:00 a.m. to 2:00 p.m. Mr. Myers arrived at the store at 5:00 a.m. At 6:15 a.m., Ms. Winfrey went to Mr. Myers, handed him her door key, and said she was going to leave and was not going to return. Ms. Winfrey further stated, "I'm not going to stick around a place where I'm treated like shit." Mr. Myers told Ms. Winfrey that he was sorry she felt that way. Ms. Winfrey responded that Mr. Myers had been "nothing but an asshole" and left. Ms. Winfrey did not return for the second portion of her split shift. There was no further contact between the parties until February 2006.

In February 2006, Ms. Winfrey contacted Mr. Myers to inquire about her W-2 form. Neither party raised the issue of her continued employment. In February or March, Ms. Winfrey spoke to the assistant manager. Again, neither party raised the issue of her continued employment.

On April 1, Ms. Winfrey called Mr. Myers to ask whether she had been placed back on the schedule. Mr. Myers indicated she had not been placed back on the schedule because she had quit. Ms. Winfrey denied having quit. Mr. Myers invited Ms. Winfrey to re-apply for employment. Ms. Winfrey declined.

Ms. Winfrey established a claim for benefits that was effective April 2, 2006, and has received benefits totaling \$1,519.00.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes a quit, and if so, whether it was a quit for good cause attributable to the employer.

The administrative law judge applies a reasonable person standard in analyzing the conduct of the employer or the claimant. See Aalbers v. IDJS, 431 N.W.2d 330, 335-336 (Iowa 1988); O'Brien v. EAB, 494 N.W.2d 660 (Iowa 1993).

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. Quits due to a conflict with a supervisor or dissatisfaction with the work environment are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(21) and (22).

The greater weight of the evidence indicates that the separation from the employment occurred on December 26 and that Ms. Winfrey voluntarily quit the employment. Ms. Winfrey had been unhappy in the employment. Ms. Winfrey's utterances on December 26, her delivery of the door key, her early departure from her morning shift, and her failure to appear for the second portion of her split-shift all indicate a voluntary quit of the employment. The Employee Separation Form Mr. Myers prepared on December 30, 2006 also indicates a quit. A reasonable employer would have concluded under the circumstances that Ms. Winfrey had quit and in the context of Ms. Winfrey's utterances and conduct, a reasonable employee would have understood that the employer would conclude a quit had occurred. The fact that the employer did not subsequently raise the issue of Ms. Winfrey's continued employment or the separation from employment does not negate or outweigh the substantial evidence of a voluntary quit. The evidence further indicates that Ms. Winfrey's quit was due to her personality conflict with Mr. Myers and her dissatisfaction with the work environment. The fact that Ms. Winfrey subsequently experienced a change of heart did not undo the quit.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Winfrey voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Winfrey is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to Ms. Winfrey.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Ms. Winfrey has received benefits for which she has been deemed ineligible, the benefits constitute an overpayment that Ms. Winfrey must repay to Iowa Workforce Development. Ms. Winfrey is overpaid \$1,519.00.

DECISION:

The Agency representative's decision dated April 19, 2006, reference 01, is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged. The claimant is overpaid \$1,519.00.

jt/pjs