

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARYLYNN ADAMS

Claimant

APPEAL NO. 13A-UI-11691-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

CASEY'S GENERAL STORES

Employer

OC: 08/25/13

Claimant: Appellant (5)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

MaryLynn Adams (claimant) appealed an unemployment insurance decision dated September 26, 2013, reference 02, which held that she was not eligible for unemployment insurance benefits because she was discharged from Casey's Marketing Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record for Appeal Number 13A-UI-10904, a telephone hearing was held on October 17, 2013. The claimant participated in the hearing. The employer participated through Tonya Mesner, Light Duty Supervisor. The claimant had sent in a letter but it was unclear that she wanted to appeal this decision. Since the same issues were listed on the related hearing notice, this hearing was held simultaneously with Appeal Number 13A-UI-10904-BT.

After closing the record and before the decision had been made, the administrative law judge realized she has a relative working at this particular employer's location. This was unable to be determined prior to the hearing since the employer has numerous facilities throughout the region. The administrative law judge has no personal knowledge of the parties or the issues involved, her relative is not connected to the issues and will not be affected by the outcome of the case. The administrative law judge subsequently called both parties and informed them of this fact in a recorded call. The parties were given the option to have another judge make the determination in this case but both consented to the assigned administrative law judge making the determination. Therefore, recusal is determined to be unnecessary.

ISSUE:

The issues are whether the claimant is disqualified for benefits, whether she was overpaid unemployment insurance benefits, whether she is responsible for repaying the overpayment and whether the employer's account is subject to charge.

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 full-time light duty order filler on July 22, 2004 and went to part-time on January 15, 2007 due to personal reasons. She stopped working

after March 29, 2013 due to a non-work-related medical injury. The claimant broke her leg after she fell in her house on March 8, 2013 and again on March 22, 2013. While she did not provide medical documentation to the employer, Supervisor Tonya Mesner did observe the fact that the claimant was in a cast and could not work.

As of today's date, the claimant has not yet been released without restrictions. She contacted her supervisor on approximately April 17, May 2, May 29, July 11, July 31 and August 29, 2013. The claimant sent Supervisor Bill Brauer a light duty release to return to work on or after August 29, 2013. She has to wear a boot and cannot stand for a prolonged period of time. The employer has not heard from the claimant since the end of August 2013 and considers her to have quit her employment.

The claimant filed a claim for unemployment insurance benefits effective August 25, 2013 but has not received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. The claimant left her employment on March 29, 2013 due to a non-work-related medical condition.

Iowa Code § 96.5-1-d provides an exception to the disqualification of benefits when an employee quits without good cause attributable only when the following conditions are all met: 1) the individual left employment due to illness, injury or pregnancy based on the advice of a licensed and practicing physician; 2) the individual immediately notified the employer after learning of the necessity of the absence or the employer consented to the absence; 3) after recovery has been certified by the physician, the individual returns to the employer and offers to perform services; and the individual's regular or comparable suitable work was not available. The rule implementing Iowa Code § 96.5-1-d explains that "[r]ecover is defined as the ability of the claimant to perform all of the duties of the previous employment." 871 IAC 24.26(6)a.

A "recovery" under Iowa Code §96.5-1-d means a complete recovery without restriction. *White v. Employment Appeal Board*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant has not been released to return to full work duties and does not meet the requirements of Iowa Code § 96.5-1-d. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The unemployment insurance decision dated September 26, 2013, reference 02, is modified without effect. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs