

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOLENE ROTHWELL

Claimant

APPEAL NO. 09A-UI-17712-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09-20-09

Claimant: Respondent (1)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.26(4) – Intolerable Working Conditions

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 17, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on January 5, 2010. The claimant did participate. The employer did participate through Beverly Wright, Area Supervisor. Employer's Exhibit One was received.

ISSUE:

Did the claimant voluntarily quit her employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a store manager full time beginning October 2, 2007 through August 25, 2009 when she voluntarily quit.

A customer went into the store where the claimant was the store manager and reported to her that he believed some of the clerks were selling alcohol to minors, specifically to his underage son. The customer's son had been in a serious automobile accident after consuming alcohol that he alleged was sold by a clerk working for the claimant. The claimant contacted Beverly Wright, her area director to discuss the situation and to discuss what to do. Ms. Wright came to the store that day and together she and the claimant watched the surveillance videos. The videos revealed that a clerk named Shawn had sold alcohol to the complaining customer's underage son. Shawn did not card the underage minor before selling him the alcohol. Ms. Wright and the claimant also learned that Kaci B., another clerk, had sold alcohol to the underage clerk Shawn. At the time that Kaci B. sold alcohol to Shawn, Shawn was only 19 or 20 years old. Ms. Wright and the claimant discussed the situation and determined that both Kaci B and Shawn would be discharged for failing to follow company policies about selling alcohol to minors. Both Kaci B. and Shawn had been trained by the claimant on how to sell age specific products, like alcohol, tobacco and lottery tickets. Both Kaci B. and Shawn were discharged immediately. The investigation continued into the activity of the other clerks. Casey W. was asked if she had sold alcohol to the complaining customer's son and denied

having done so. Kathy S. was asked if she had sold alcohol to the complaining customer's son and admitted that she had sold alcohol to him. When Ms. Wright asked Kathy S. why she had sold alcohol to the customer's minor son, Kathy S. said she did not know that he was a minor. The claimant had personally trained Kathy S. on how to sell age restricted products and Kathy S. knew that she had to card every single customer who did not appear to be of age. Kathy S. was not allowed to rely on the fact that another clerk sold alcohol to an individual as a reason not to card that person. Kathy S.'s sister is Janice, another area supervisor for the company and a good friend of Ms. Wright. Ms. Wright called Janice, told her that her sister had sold alcohol to an underage minor and asked her to speak to Kathy S. Ms. Wright did not discharge Kathy S. and would not allow the claimant, the store manager, to do so despite the fact that Kathy S. had admitted that she violated the employer's alcohol sales policy the same way that Kaci B. and Shawn had. The claimant was concerned that the store was going to be sued for selling to an underage minor who was then involved in an automobile accident. Additionally, she was upset that Ms. Wright was treating the clerks differently based upon her friendship with Janice, Kathy S.'s sister. The claimant went over Ms. Wright's head and complained to the corporate office, but no action was taken to insure that the disciplinary policies were enforced fairly among all employees.

The claimant never sold alcohol or any other age-restricted product to a minor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment with good cause attributable to the employer.

Iowa Code § 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.

871 IAC 24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(4) The claimant left due to intolerable or detrimental working conditions.

The administrative law judge concludes that the only reason that Kathy S. was not discharged for engaging in the same behavior that led to the discharge of Shawn and Kaci B. was due to Ms. Wright's friendship with her sister Janice. Additionally, Ms. Wright would not let the claimant impose discipline on Kathy S. like that given to other employees. Based on Ms. Wright's disparate imposition of company policies, due to her personal friendship with the sister of the offending employee, the claimant has established that the employer created an intolerable work environment and benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The November 17, 2009, reference 01, decision is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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