

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CERRI OLDSEN

Claimant

APPEAL NO. 12A-UI-00464-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 12/04/11

Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Quit

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Casey's Marketing Company filed a timely appeal from a representative's decision dated January 5, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 9, 2012. The claimant participated. The employer participated by Mr. Curt Fox, Area Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Cerri Oldsen was employed by Casey's Marketing Company from August 2011 until December 1, 2011 when she voluntarily left employment. Ms. Oldsen worked as a part-time cashier and was paid by the hour. Her immediate supervisor was Ms. Teri Knono.

Ms. Oldsen left her employment with Casey's Marketing Company after verbally informing the area district manager of her intention to leave. At the time of the telephone call to Mr. Fox, Ms. Oldsen stated that she was leaving employment due to concerns that the activities of a relative who was also employed at the store might be attributed to Ms. Oldsen. Ms. Oldsen was concerned because she believed that individual was stealing from the company, however, the manager was not taking action. Although the claimant had been involved in a situation the preceding day where company systems had gone down and she was unable to use debit cards and or credit cards of customers, Ms. Oldsen did not mention that as a reason for leaving in her conversation with Mr. Fox.

The day preceding the claimant's leaving employment Ms. Oldsen had been unable to use credit card/debit card equipment due to icing caused by a snowstorm. Ms. Oldsen had been unable to secure direct assistance from her supervisor and some customers had become irate because of the situation. After Ms. Oldsen had informed customers in advance that she would be unable to process debit cards customers had become more understanding of the situation.

Ms. Oldsen finished her work shift that day and concluded the problem would probably be resolved by her next working day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer.

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.

871 IAC 24.25(6) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

871 IAC 24.25(29) provides:

(29) The claimant left in anticipation of a layoff in the near future; however, work was still available at the time claimant left the employment.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. An individual who voluntarily leaves their employment must first give notice to the employer of their reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). Claimants are not required to give notice of an intention to quit due to intolerable, detrimental or unsafe working environments if the employer had or should have had reasonable knowledge of the condition. Hy-Vee v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005)..

Inasmuch as the evidence in the record establishes that the reason given by Ms. Oldsen for leaving her employment was dissatisfaction with the decision of the manager not to take disciplinary action against a relative who was also employed at the store and who Ms. Oldsen believed was stealing, the administrative law judge concludes that the claimant did not leave employment due to detrimental or intolerable working conditions. The evidence in the record establishes that the sole reason that Ms. Oldsen gave for leaving employment was her dissatisfaction with failure on the part of her supervisor to take disciplinary action against a relative who was employed by the company. Although given the opportunity the claimant did not complain to the area supervisor about any equipment malfunctions the preceding day.

The day preceding the claimant's leaving Ms. Oldsen did have difficulty in performing her duties and immediate assistance from her supervisor was not available. The claimant, however, did not avail herself of additional aid that was available to her by calling Mr. Fox, the area district manager. The claimant had concluded at the end of her work shift that the problems that day would probably be resolved by the time that she reported to work for her next scheduled shift. The administrative law judge finds the claimant's testimony that she believed that she was being physically threatened by customers to strain credibility.

While the claimant's reasons for leaving her employment with Casey's Marketing Company may have been good cause reasons from her personal viewpoint, they were not good cause reasons attributable to the employer. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 5, 2012, reference 01, is reversed. The claimant left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work.

equal to ten times her weekly benefit amount, and is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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