

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYCHEL D GARBES

Claimant

APPEAL NO. 09A-UI-07643-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 04/12/09

Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Casey's Marketing Company filed an appeal from a representative's decision dated May 11, 2009, reference 01, which held that no disqualification would be imposed regarding Raychel Garbes' separation from employment. After due notice was issued, a hearing was held by telephone on June 10, 2009. Ms. Garbes participated personally and offered additional testimony from Shelly Boggess. The employer participated by Kevin Sinwell, Area Supervisor.

ISSUE:

At issue in this matter is whether Ms. Garbes was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Garbes' last period of employment with Casey's was from February 15, 2008 until April 15, 2009. She was employed full time as a cook. She quit the employment and told the area supervisor she could no longer work with her manager. The area supervisor, Kevin Sinwell, offered to meet with the two of them to resolve the issue but Ms. Garbes declined.

Ms. Garbes did not have any problems with her manager until December of 2008 when she was first disciplined. She received a warning in December because she and a coworker were discussing a customer's son in the store and the customer overheard them. She received another warning on January 5 that covered two issues. One issue involved a customer complaint that she said she was too busy to give him the total for several pizzas he ordered. The second issue addressed by the January warning was the use of offensive language at the workplace. Both the store manager and the area supervisor sat in on the disciplinary sessions in December and January. Ms. Garbes did not raise any issues during either meeting regarding the manner in which she was treated by her manager.

In February or March of 2009, Ms. Garbes spoke to her manager about the fact that others were not doing prep work in the kitchen before her shift. The manager indicated she would make sure the tasks were done. On or about April 15, 2009, Ms. Garbes heard from another employee that the manager had told a third employee not to perform any prep work for Ms. Garbes. As a result, Ms. Garbes decided to quit. Continued work would have been available if she had not quit.

Ms. Garbes filed a claim for job insurance benefits effective April 12, 2009. She has received a total of \$1,124.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Ms. Garbes' stated reason for leaving was that she could no longer work with her manager. However, she did not, prior to quitting, put the employer on notice that she was having difficulties with her manager. She contended that she and the manager had met with the area supervisor over the issue on two occasions prior to her quitting. However, the meetings she referenced were meetings held for the purpose of administering discipline to her. She did not during those meetings identify any problems she was having with her manager.

Ms. Garbes testified that she spoke with her manager about the fact that others were not performing prep work on shifts prior to hers. She also testified that there was improvement in the prep work thereafter. If the manager was, in fact, discouraging others from performing prep work, it seems unlikely she would take steps that resulted in improvement in that area. Ms. Garbes' decision to quit was based on second-hand information she received that the manager had told a coworker not to do prep work for her. She did not discuss the matter with the manager to determine if the coworker had misunderstood her instructions. Furthermore, Mr. Sinwell offered her the opportunity to meet with him and the manager to try to resolve whatever issues existed between the two but she declined.

The employer had no notice prior to April 15 that Ms. Garbes had work-related issues that needed to be addressed. Therefore, the employer had no prior opportunity to try to salvage the employment relationship. Ms. Garbes refused the opportunity the employer did provide to try to retain her. Inasmuch as the employer did not have a reasonable opportunity to address and try to resolve the matter what was causing her to quit, it is concluded that Ms. Garbes did not have good cause attributable to the employer for quitting. As such, benefits are denied.

Ms. Garbes has received benefits since filing her claim. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated May 11, 2009, reference 01, is hereby reversed. Ms. Garbes voluntarily quit her employment with Casey's for no good cause attributable to the employer. Benefits are withheld until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Ms. Garbes will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs