

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK S BARKER**

Claimant

**APPEAL NO. 09A-UI-00283-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 12/07/08**

**Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.5(2)a – Discharge/Misconduct  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 30, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on March 5, 2009. Claimant participated. Employer participated through Crystal Stotz and Julie Olson.

**ISSUE:**

The issue is whether quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits and if so, whether he is overpaid benefits as a result.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a pizza maker and was employed from February 8, 2008 until November 7, 2008 when he quit. Quit after she left a note asking him to clean the grease trap. Claimant went outside, had a cigarette, went back inside and told Stotz he was “not taking any more of her [Olson’s] bullshit” and left. His job was not in jeopardy and the note did not say that he would be replaced if he did not perform that task. Continued work was available had he returned within a few days and asked for his job. Claimant’s concern with emptying the grease trap was that he believed he would have to lift a heavy container filled with grease. He would not have had to lift but only tip the container over the lip of a floor sink. Stotz was also present to assist had he requested her assistance. He did not. He was also upset because he believed the grease trap has just been emptied and “everyone else leaves the place a total disaster” and said, “that’s what set me off.” Although claimant had a hernia repair scheduled the next Monday there were no medical restrictions on his doctor’s note. Claimant and Stotz attempted to reach Olson and Stotz left a message but claimant left before she was able to return the call.

Claimant has received unemployment benefits since filing a claim with an effective date of December 7, 2008.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without 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 24.25(6), (22), (27) 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 § 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 § 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.

(22) The claimant left because of a personality conflict with the supervisor.

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant's conflict with Olson, his unwillingness to wait for her to respond to the phone message, his failure to ask Stotz for assistance with the grease trap task, and leaving the shift early without permission because he was upset at how others did their jobs were not good cause reasons for leaving the employment. Benefits are denied.

Iowa Code § 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.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment may not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. If so, the employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. The matter of whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

**DECISION:**

The December 30, 2008, reference 01, decision is reversed. Claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such

time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. Claimant is overpaid benefits in the amount of \$695.00.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs