

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MELANIE R MYRE
706 TYSON ST
GLENWOOD IA 51534 1760**

**CASEY'S MARKETING CO
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283**

**Appeal Number: 06A-UI-02022-DWT
OC: 01/15/06 R: 01
Claimant: Respondent (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's February 8, 2006 decision (reference 02) that concluded Melanie R. Myre (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2006. The claimant participated in the hearing. Kristen Stinson, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

Has the claimant been overpaid any benefits?

FINDINGS OF FACT:

The claimant started working for the employer on September 3, 2005. The claimant worked part time for the employer as a cook and cashier. Stinson was the claimant's supervisor. With the exception of December, the claimant worked an average of 20 hours a week for the employer.

During her employment, the claimant asked for a number of days off from work. In late October the claimant asked for ten days off from work for family medical reasons. In September, October and November, the claimant was absent from work for one or two days at a time. In December, the claimant came to work with a walking cast after she broke her foot outside of work. As a result of problems she experienced with her foot, the claimant only worked four hours between December 15 and 30, 2005. The claimant's doctor restricted her from performing any work January 1 through 7, 2006. On January 9, the claimant gave the employer her doctor's work release indicating the claimant could return to work and she did not have any work restrictions.

After receiving the doctor's release, Stinson only scheduled to the claimant two days a week or about 14 hours a week. The schedule for January only had the claimant working 14 hours a week. On January 14, the last day the claimant worked, she told Stinson she could not financially survive by just working two days a week. Stinson indicated she would only schedule the claimant for two days because the employer did not want her to hurt her foot again. Also, at this time Stinson did not consider the claimant a reliable employee and it was easier to find a replacement for someone who worked two days a week then for someone who worked three or four days a week. Since other employees had been covering for the claimant, Stinson did not want to immediately reduce their hours. Stinson wanted to see if the claimant worked 14 hours a week as scheduled or if she would again ask for time off from work. Although the claimant understood Stinson would never schedule her for more than 14 hours a week, Stinson intended to schedule the claimant for 21 to 22 hours a week beginning in February.

On January 15, 2006, the claimant called Stinson and reported she was quitting immediately. Sometime after the claimant quit, she contacted the district manager and asked for a transfer. The claimant reported Stinson treated her fairly by only scheduling her one day a week.

The claimant established a claim for unemployment insurance benefits during the week of January 15, 2006. The claimant filed claims for the weeks ending January 21 through March 4, 2006. The claimant received her maximum weekly benefit amount of \$160.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. On

January 15, 2006, the claimant quit her employment without any notice. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant voluntarily quits employment with good cause when she quits because of a substantial change in the employment contract. 871 IAC 24.26(1). The facts indicate that after being unable to work 20 hours a week for at least three weeks, the claimant expected the employer to immediately schedule her to work 20 hours a week after she gave the employer a doctor's note indicating she did not have any work restrictions as of January 9, 2006. When the claimant asked Stinson about scheduling her for more hours, Stinson had doubts about the claimant's reliability and indicated the current schedule would not be changed. The claimant was upset when she understood Stinson would never schedule her for more than 14 hours a week. Instead, of trying to talk to Stinson or the district manager, the claimant quit the next day without any notice. Even during the phone conversation when the claimant her resignation, the claimant failed to give Stinson an opportunity to tell her in February she would be scheduled to work 20 to 21 hours a week. The facts establish the claimant would only temporarily work 14 hours before being scheduled to work 20 to 21 hours. The claimant did not establish she quit for reasons that qualify her to receive unemployment insurance benefits. As of January 15, 2006, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits for the weeks ending January 21 through March 4, 2006. The claimant has been overpaid a total of \$1,120.00 in benefits for these weeks.

DECISION:

The representative's February 8, 2006 decision (reference 02) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of January 15, 2006. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending January 21 through March 4, 2006. The claimant has been overpaid and must repay a total of \$1,120.00 in benefits she received for these weeks.

dlw/tjc