

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN M JUSTICE

Claimant

APPEAL NO. 11A-UI-09928-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

CASEY'S GENERAL STORES

Employer

OC: 06/05/11

Claimant: Appellant (4-R)

Iowa Code section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

Dawn Justice filed a timely appeal from the July 25, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on August 19, 2011. Ms. Justice participated. Katie Bruening, store manager, represented the employer.

ISSUES:

Whether Ms. Justice separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether the quit was from part-time employment.

Whether the employer ended the employment prior to the effective quit date provided by Ms. Justice.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dawn Justice was employed by Casey's from 2009 and last performed work on November 3, 2010. Ms. Justice started as a full-time employee, but requested to go part-time in the spring of 2010. In mid-October 2010, Ms. Justice notified the employer that she would be leaving the employment effective November 29, 2010. Ms. Justice planned to move to the southwestern United States. Ms. Justice told the employer she was packing for her move. Though Ms. Justice cites health reasons for the move, rheumatoid arthritis and degenerative bone disease, Ms. Justice did not provide any medical documentation to the employer and there was nothing about the employment that made her condition worse. Ms. Justice was able to perform her regular duties despite her health issues. Ms. Bruening ceased scheduling Ms. Justice for work hours after November 3, 2010.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6) provides as follows:

Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence does indeed establish a voluntary quit. Ms. Justice had given the employer notice that she would be leaving effective November 29, 2010. Ms. Justice told the employer she was preparing for her move. Thus, there was a voluntary quit effective November 29, 2010. A worker who quits to relocate to a new locality is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(2). Though Ms. Justice cites non-work-related health reasons for the decision to relocate, Ms. Justice has failed to present sufficient evidence to support her assertion that relocation was upon the advice of a licensed and practicing physician. Ms. Justice provided no medical documentation to the employer and provided no medical documentation for the hearing. In addition, since relocating to the southwestern United States, Ms. Justice has not recovered and returned to the employer to offer her services. Ms. Justice's voluntary quit, effective November 29, 2010, was without good cause attributable to the employer. Thus, effective November 29, 2010, Ms. Justice is disqualified for benefits *based on wages earned through the Casey's employment* until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to Ms. Justice for the benefit week that ended December 4, 2010 or thereafter.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits, may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Because Ms. Justice was a part-time employee for a substantial period prior to her separation from the employment, Ms. Justice would remain eligible for reduced benefits based on wages earned from base period employment *other than Casey's*, provided she is otherwise eligible. This matter will be remanded to the Claims Division for determination of Ms. Justice's eligibility for reduced benefits.

Iowa Administrative Code rule 871 IAC 24.26(12) provides as follows:

When an employee gives notice of intent to resign at a future date, it is a quit issue on that future date. Should the employer terminate the employee immediately, such employee shall be eligible for benefits for the period between the actual separation and the future quit date given by the claimant.

In this case, the employer effectively ended the employment as of November 3, 2010, though Ms. Justice had provided a November 29, 2010 quit date. Ms. Justice is eligible for benefits for the weeks ending November 6, 13, 20 and 27, 2010, provided she is otherwise eligible. Casey's account with Workforce Development may be charged for benefits paid for those weeks, but for those weeks only.

DECISION:

The Agency representative's July 25, 2011, reference 02, decision is modified as follows. The claimant voluntarily quit part-time employment without good cause attributable to the employer effective November 29, 2010. The employer prematurely ended the employment. The claimant is eligible for benefits for the weeks ending November 6, 13, 20, and 27, 2010, provided she is otherwise eligible. The employer's account may be charged for benefits paid for those weeks, but for those weeks only. Effective November 29, 2010, the claimant is eligible for reduced benefits based on base period employment *other than Casey's*, provided she meets all eligibility requirements. But, effective November 29, 2010, the claimant is disqualified for benefits *based*

on wages earned through the Casey's employment until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account will not be charged for benefits paid to the claimant for the benefit week that ended December 4, 2010 or thereafter. This matter will be remanded to the Claims Division for determination of the claimant's eligibility for reduced benefits effective November 29, 2010.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw