

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA MILLER

Claimant

APPEAL NO. 23A-UI-09308-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY

Employer

OC: 09/03/23

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On October 2, 2023, Jessica Miller (claimant) filed a timely appeal from the September 26, 2023 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on August 17, 2023 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 17, 2023. Claimant participated. The employer did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Exhibits A, B and C were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, and WAGEA.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Jessica Miller (claimant) has been employed with Casey's Marketing Company during multiple distinct periods. The most recent employment began in May 2021. Ms. Miller most recently performed work for Casey's on August 17, 2023. During the most recent period of employment, Ms. Miller worked at multiple Casey's stores. During the last year of the employment, Ms. Miller was a full-time First Assistant Manager at the Casey's store in Hudson, Iowa. During the last couple months of Ms. Miller's employment, Victoria Gold was Store Manager at the Hudson Casey's and was Ms. Miller's supervisor. As an Assistant Manager, Ms. Miller was expected to be available to work her scheduled shifts and to cover shifts for other absent employees when the employer could not otherwise cover the shift.

Ms. Miller had various health issues that resulted in Ms. Miller frequently needing to be absent from the Casey's employment. Ms. Miller found Ms. Gold to be less understanding about her need to absent from work than other supervisors had been. At one point, Ms. Miller overheard

Ms. Gold speaking with another manager by phone and heard Ms. Gold refer to Ms. Miller as a “bad apple.”

On July 26, 2023, Ms. Miller was absent from work due to an issue that prompted a trip to the emergency room. When Ms. Miller was done at the emergency room, she notified Ms. Gold that she had a medical note indicating she was to be off work the next day, July 27, and could return on July 28, 2023. Ms. Gold told Ms. Miller that the store was short-staffed, that there was no one else to cover the July 27 shift, and that Ms. Miller would have to work on July 27. Ms. Miller worked the July 27 shift.

Ms. Miller continued to report for work until August 17, 2023. On that day, Ms. Miller was scheduled to work the opening shift, from 4:45 a.m. to 11:00 a.m., and was assigned to run the cash registers. Another employee, Kendra, was scheduled to start her shift at 7:00 or 8:00 a.m. and was also assigned to the registers. Ms. Miller was not feeling well that morning and ended up leaving at about 9:00 a.m. While Ms. Miller asserts she arranged “coverage” through Kendra before she left work, Ms. Miller’s early departure actually left the store short one person during the last two hours of Ms. Miller’s shift. Prior to leaving work that morning, Ms. Miller attempted to speak to Ms. Gold about not feeling well and needing to leave work early. Ms. Miller perceived that Ms. Gold was uninterested in having the discussion. Ms. Gold entered the manager’s office without engaging with Ms. Miller. Ms. Miller then called District Manager Leanne Purdy, to complain about Ms. Gold not being sympathetic to her need to leave work early. Ms. Purdy listened without commenting. Ms. Miller did not speak with Ms. Gold again prior to leaving work early on August 17, 2023. After Ms. Miller left work she went home.

After Ms. Miller left work early on August 17, 2023, she was next scheduled to work on August 18, 2023. Ms. Miller did not report for that shift or for any subsequent shifts. After Ms. Miller left work early on August 17, a coworker contacted Ms. Miller and alleged that Ms. Gold was talking in the workplace about discharging Ms. Miller from the employment. However, neither Ms. Gold nor any other member of Casey’s management notified Ms. Miller that she was discharged from the employment. Indeed, Ms. Miller still had keys to the Hudson Casey’s store. Ms. Miller’s decision not to return for additional shifts was not medically necessary and was not based on advice from a doctor. Rather than reporting for further shifts, Ms. Miller attempted to call Ms. Gold’s cell phone and concluded Ms. Gold must have “blocked” her number. At some point, Ms. Miller discovered she no longer had access to the employer’s ADP online portal. Ms. Miller elected not to call the store phone or to go to the Hudson store to speak directly with Ms. Gold.

On September 22, 2023, after Ms. Miller had been away from the workplace for five days, Ms. Purdy sent Ms. Miller a text message requesting return of the employer’s keys. Ms. Purdy told Ms. Miller that she could return the keys to any of the stores Ms. Purdy supervised.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). 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 Iowa Administrative Code rule 871-24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The weight of the evidence establishes that Ms. Miller voluntarily quit effective October 17, 2023 and was not discharged from the employment. The employer never notified the claimant that she was discharged from the employment. Instead, Ms. Miller elected not to return for additional shifts and elected not to return to the Hudson Casey's to speak directly with Ms. Gold. Ms. Miller still had the employer's keys in her possession five days after she asserts the employer discharged her from the employment. It is highly unlikely the employer would have discharged Ms. Miller without first retrieving its keys. The employer had to request return of the employer's keys. The information Ms. Miller received second-hand from a non-management coworker about Ms. Gold allegedly speaking about discharging Ms. Miller from the employment did not provide a reasonable or reliable basis for Ms. Miller to conclude she had in fact been discharged. Nor did Ms. Miller overhearing Ms. Gold at an earlier point referring to Ms. Miller as a "bad apple" indicate a discharge from the employment. Regardless of whether the separation was a quit or discharge, a reasonable person would expect the employer to disable Ms. Miller's access to the ADP portal at the time Ms. Miller separated from the employment,. Ms. Gold blocking Ms. Miller from calling her personal cell phone would not prevent Ms. Miller from calling the Hudson store to speak with Ms. Gold or from going to the Hudson store to speak with Ms. Gold.

The remaining question is whether Ms. Miller voluntary quit with good cause attributable to the employer.

Iowa Code section 96.5(1)(d) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Administrative Code rule 817-24.26(6)(a) 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

On the other hand, quits due to dissatisfaction with the work environment or due to a personality conflict with a supervisor are presumed to be without good cause attributable to the employer. See Iowa Admin. Code rule 871-24.25(21) and (22).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. Ms. Miller's testimony was often confused, illogical, and internally contradictory. See for example, Ms. Miller's testimony regarding finding "coverage" on August 17, 2023, which turned out not be "coverage" of the shift within the common meaning and instead turned out to be leaving the employer short-staffed. See also Ms. Miller's assertion at various moments that the employer discharged her from the employment. Upon further questioning, it was clear the employer did not discharge Ms. Miller from the employment and that Ms. Miller had elected not to return. Ms. Miller quit because her new supervisor was unsympathetic to her need to frequently be absent from the employment. Aside from requiring the claimant to report on July 27, 2023, the evidence does not establish any other instance in which the employer expected or required the claimant to work at a time when the claimant indicates she was not feeling well. That isolated incident occurred three weeks prior to the claimant's final shift. There is no indication that the situation ever reoccurred. Given Ms. Miller's role as a management team member important to store operations, a reasonable person would not expect the employer to welcome Ms. Miller's frequent absences. There is a difference between an unsympathetic employment relationship, which is common, and intolerable and detrimental working conditions that would have caused a reasonable person to leave the employment. The evidence in the record does not establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. Nor does the evidence indicate a quit due to a medical issue and upon the advice of a doctor. The evidence indicates instead that Ms. Miller voluntarily quit the employment due to dissatisfaction with the work environment under the new store manager.

Because the evidence establishes a voluntary quit without good cause attributable to the employer, Ms. Miller is disqualified for benefits until she has worked in and been paid wages for

insured work equal to 10 times her weekly benefit amount. Ms. Miller must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The September 26, 2023 (reference 01) decision is AFFIRMED. The claimant voluntarily quit the employment effective August 17, 2023 without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in a been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

October 18, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.