

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

DAWN M SCHATZ
APT 1
220 SUGAR CREEK LN
NORTH LIBERTY IA 52317 9414

CASEYS MARKETING CO
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166 0283

Appeal Number: 06A-UI-02686-DWT
OC: 02/05/06 R: 03
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 23, 2006 decision (reference 01) that concluded Dawn M. Schatz (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation occurred for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2006. The claimant participated in the hearing. Carol Schwartz, the store 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, or did the employer discharge her for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on July 15, 2005. The claimant worked as a full-time assistant manager. Schwartz supervised the claimant.

On December 16, the claimant notified the employer she was unable to work as scheduled. The claimant worked only part of her shift on December 19, 2005. The claimant went to the emergency room for pain in her shoulder on December 19. The claimant did not work on December 20. The claimant worked as scheduled on December 21, 2005. The claimant did lift more than ten pounds and she did not unload any items off the truck that made a delivery to the employer on December 21, 2005. The claimant worked part of her scheduled shift on December 23, 2005. On December 23, a one of the claimant's friends gave the employer a doctor's statement indicating the claimant could not work until December 29, 2005. The statement also indicated the claimant could not lift anything more than ten pounds.

On December 29, 2005, the claimant worked the register and did not lift anything more than ten pounds. The employer asked the claimant for information about the work-related injury the claimant asserted occurred on December 16, 2005. The claimant did not provide the information to Schwartz, but instead called the corporate office about her worker's compensation claim.

The claimant was scheduled to work on December 30 from 2:00 p.m. to 11:00 p.m. The claimant did not report to work or notify the employer she was unable to work. The claimant had a friend take her to the emergency room around 1:00 p.m. on December 30 because of pain she experienced in her shoulder. The claimant was released from the emergency room between 3:00 and 4:00 p.m. on December 30, but she did not contact the employer. The employer contacted the claimant on December 30 and asked the claimant to call her because the employer had not received any information about a "supposed" work injury. Sometime after the employer left a phone message, the claimant brought a doctor's statement to the store verifying she had been at the emergency room that afternoon.

On January 2, the claimant was scheduled to work 5:00 a.m. to 2:00 p.m. The claimant understood part of job duty that day was to make doughnuts. The claimant did not report to work because she assumed the employer would not accommodate her ten-pound weight restriction at this assigned job task. The claimant did not know the employer had made accommodations so the claimant would not lift anymore than ten pounds even when she made doughnuts. The claimant did not contact the employer after January 30 because the claimant felt Schwartz was intimidating. On January 13, 2006, the employer sent the claimant her final paycheck and asked the claimant to return her store keys. When the claimant did not return to work or contact the employer after December 29, the employer no longer considered her an employee as of January 6, 2006.

The claimant established a claim for unemployment insurance benefits during the week of February 5, 2006. The claimant filed claims for the weeks ending March 4 through 25, 2006. The claimant received her maximum weekly benefit amount of \$183.00 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 or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The claimant quit her employment when she failed to contact the employer or report to work even though she was scheduled to work after December 30, 2005. 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 with good cause if she leaves employment because of intolerable working conditions. 871 IAC 24.26(4). Also, if a claimant quits because continued employment would be hazardous to her health and her physician advises her to quit, the claimant has good cause to quit. 871 IAC 24.26(6)(b). The claimant did not establish that continued employment would be hazardous to her health. Also, there is no evidence that the claimant's physician advised her to quit.

The claimant did not return to work or contact the employer after December 30, 2005, because she incorrectly assumed the employer would not accommodate her ten-pound weight restriction. The claimant based this conclusion on the fact she was scheduled to make doughnuts. Since the claimant failed to talk to the employer about how she could perform this job and not lift more than ten pounds, the claimant did not know that the employer had made accommodations for her so she could have completed this job duty without lifting more than ten pounds.

The claimant also felt that Schwartz was intimidating. The claimant based this conclusion on a phone call she received from Schwartz before the claimant provided the December 30, 2005 doctor's statement and just after the claimant talked to the corporate office about her worker's compensation claim. When a claimant quits by abandoning her job because of a personality conflict with her supervisor, the regulations presume a claimant has voluntarily quit without good cause. 871 IAC 24.25(22).

The claimant established personal reasons for quitting her employment by abandoning it. The claimant did not establish she quit for reasons that qualify her to receive unemployment insurance benefits. As of February 5, 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 benefits for the weeks ending March 4 through 25, 2006. The claimant has been overpaid \$732.00 in benefits she received for these weeks.

DECISION:

The representative's February 23, 2006 decision (reference 01) is reversed. The claimant voluntarily quit her employment by abandoning 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 February 5, 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 benefits for the weeks ending March 4 through 25, 2006. The claimant has been overpaid and must repay a total of \$732.00 in benefits she received for these weeks.

dlw/tjc