

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACI S MUILENBURG**

Claimant

**APPEAL NO. 09A-UI-02401-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 12/28/08**

**Claimant: Respondent (2-R)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, Casey's, filed an appeal from a decision dated February 6, 2009, reference 01. The decision allowed benefits to the claimant, Traci Muilenburg. After due notice was issued a hearing was held by telephone conference call on March 11, 2009. The claimant participated on her own behalf. The employer participated by Area Supervisor Kenna Salicky.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Traci Muilenburg was employed by Casey's from February 13, 2008 until November 17, 2008 as a full-time first assistant manager. Under corporate policy, in those stores which have first and second assistant managers, the store manager is not required to work weekends. All managers are required to work any shift when the store is "short staffed." In addition, under corporate policy, only the managers may do the inventory and ordering of certain products such as tobacco.

The claimant felt she was being singled out for poor treatment when she had to work several weekends in a row at the end of August and the beginning of September 2008, due to heavy holiday store traffic and the store being short staffed. When Ms. Muilenburg complained to Area Supervisor Kenna Salicky about this, the policy was again explained to her. The store manager then did try to schedule the claimant off for three, three-day weekends in a row, which never occurred as Ms. Muilenburg elected to work for others during that time.

On November 17, 2008, the claimant attended a staff meeting between 10:30 a.m. and 11:00 a.m. While there she looked at the schedule for the coming week and discovered she was scheduled to work on her weekend off, November 29 and 30, 2008. The other assistant manager whose weekend it was to be working, had requested the time off to visit her son before he was deployed by the military to Iraq. Ms. Muilenburg was angry to think she had been scheduled without being consulted by the manager. She had family in town for the holiday but the store manager said she would have to work it.

Ms. Muilenburg was scheduled her regular shift on November 17, 2008, to begin at 2:00 p.m. She was told she would have to finish up the ordering of the cigarettes and was angry to think that the store manager had not gotten that done, in addition to her other duties, that morning. Instead of working her shift she notified the manager she was quitting and left.

The claimant maintained she was suffering from chest pains due to the stress of the job. She had suffered similar chest pains at her previous jobs, for which she had consulted a doctor. Regarding her decision to quit Casey's, she did not consult a doctor but merely brought the previous diagnosis forward from the other job.

Traci Muilenburg has received unemployment benefits since filing a claim with an effective date of December 28, 2008.

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

Iowa Code section 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(21) and (22) provide:

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 section 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 section 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:

(21) The claimant left because of dissatisfaction with the work environment.

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

The claimant quit because she did not care for her work duties and did not get along with her supervisor. Many of the things about which she complained, working weekends and having to do the ordering of the tobacco products, were not the policies of the individual store manager but of the corporation. These were part of her regular job duties. The "stress" about which she complained appears to be the product of the particular work environment of any gas/convenience store.

"Good cause" for leaving employment must be that which is reasonable to the average person, not to the overly sensitive individual or the claimant in particular. Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (Florida App. 1973). Ms. Muilenburg appears to have been overly sensitive to the environment in a gas/convenience store and although her reaction to the stress may be legitimate, the administrative law judge cannot conclude it constitutes good cause attributable to the employer.

The precipitating event which caused her to quit was being asked to do the tobacco ordering by the manager, and not being consulted about the schedule before it was made. There is nothing in the record to indicate either of these events would constitute detrimental or intolerable work conditions.

The chest pains about which she complained appear to have been a pre-existing condition. She did not consult with a doctor before making her decision to quit, merely assumed the recommendation to quit her previous job because of them could equally be applied to this job. The administrative law judge does not feel the claimant was medically qualified to make that diagnosis. She did not have the recommendation of a physician to quit this job as required by Iowa Code section 96.5(1)d.

The record establishes the claimant quit without good cause attributable to the employer and she is disqualified.

Iowa Code section 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 states pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

**DECISION:**

The representative's decision of February 6, 2009, reference 01, is reversed. Traci Muilenburg is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

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