

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUTUMN N MORRISON
Claimant

APPEAL NO. 08A-UI-09846-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING CO
Employer

OC: 09-21-08 R: 02
Claimant: Respondent (2R)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 16, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on November 10, 2008. The claimant did participate. The employer did participate through Donna McFarland, Manager.

ISSUES:

Did the claimant voluntarily quit her employment without good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an assistant manager full time beginning September 12, 2006 through July 11, 2008 when she voluntarily quit.

The claimant quit because she was being given a written reprimand for failing to answer her phone on July 4 when she was on duty to cover the store. The claimant disagreed with the reprimand so she quit. The manager and the assistant manager rotate who will be on call during alternate weekends for employees to contact if there is a problem at the store. The claimant as the assistant manager was responsible for taking phone calls on the July 4 holiday. The employee scheduled to come to work at 4:00 p.m. did not show up for work. The employee on duty called the claimant who did not answer her cell phone. When the employee on duty could not reach the claimant, she called the manager to seek her help in covering the vacant shift. The manager went to the missing employee's house and woke her up so she could come into work.

The claimant called the store when she got the message on her voice mail, but by that time the manager had already solved the problem. The claimant knew that it was her responsibility to

take phone calls on the July 4 holiday and she was not available when needed by an employee in the store.

The claimant quit after having been reprimanded on July 11. The claimant was not going to be discharged, merely reprimanded. The claimant knew that she was to be available to take calls and thus the reprimand was warranted. Continued work was available for the claimant if she had not quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 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(28) provides:

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 § 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 § 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:

(28) The claimant left after being reprimanded.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6-2 (amended 1998).

The claimant's decision to quit after having been reprimanded was not a good-cause reason attributable to the employer for leaving. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

DECISION:

The October 16, 2008, reference 01, decision is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as 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 claimant has been overpaid unemployment insurance benefits in the amount of \$990.00.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css