

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTIE S BARNES
Claimant

APPEAL NO. 11A-UI-00619-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 10/24/10
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated January 7, 2011, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on February 22, 2011. Although the claimant submitted a telephone number, repeated attempts were made to reach the claimant, however, Ms. Barnes was not available and her voice mail was indicated as being full. The employer participated by Mr. Terry Cook, Manager; Mr. Perry Miller, Hourly Employee, and Ms. Anglia Harless, Assistant Manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Christie Barnes was employed by Casey's Marketing Company from June 22, 2010 until November 19, 2010 when she voluntarily quit employment. Ms. Barnes was employed as a part-time cook and was paid by the hour. Her immediate supervisor was Terry Cook.

On November 19, 2010, Ms. Barnes provided notice to the employer indicating that she would not be returning to work as she hoped to transfer to a different Casey's facility. Although the claimant had been scheduled to work, the claimant did not call in thereafter nor report for scheduled work. Employees are ineligible to transfer to other facilities unless they complete a two-week notice period at the facility they are currently assigned to. Employees are aware of this policy because it is in the company handbook and they are reminded of it when they attempt to transfer. The claimant did not provide a two-week notice to the employer nor complete a notice period.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant left employment with good cause attributable to the employer. It does not.

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.

The evidence in the record establishes that the claimant chose to voluntarily leave her employment at the Casey's General Store where she was working because of her desire to accept employment at a different Casey's facility. Ms. Barnes knew or should have known based upon the information provided to all employees that she was required to provide a two-week notice at her current facility and to complete the notice period before being eligible to transfer.

On November 19, 2010, the claimant indicated that she would not again be reporting for work although work continued to be available to her at the location where she was employed. Based upon the evidence in the record the administrative law judge concludes the claimant's quitting was not attributable to the employer. Benefits are withheld.

Iowa Code § 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 state pursuant to section 602.10101.

DECISION:

The representative's decision dated January 7, 2011, reference 02, is reversed. Claimant quit employment without good cause attributable to the employer. Unemployment insurance benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount and meets all other eligibility requirements of Iowa law. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs