

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA M. WILLEY
Claimant

APPEAL NO. 09A-UI-08707-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/26/09
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 8, 2009, reference 04, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on July 2, 2009. Claimant participated. Employer participated by Chuck Ireland, Manager of Store Operations at Iowa City #1, and Steve Lugar, Bakery Manager at Iowa City #1. The employer was represented by Daniel Spier. The record consists of the testimony of Melissa Willey; the testimony of Chuck Ireland; and the testimony of Steve Lugar.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a full-time cake decorator. In late March 2009, the claimant was called to a meeting with Chuck Ireland and Al Dix, the store manager. The claimant was counseled in that meeting about some concerns management had with her attitude and the way that she worked with other employees in the bakery department. The employer's intent was to help the claimant improve her performance. There was no intent to terminate her employment.

On April 23, 2009, Steve Lugar spoke to the claimant about the way the bakery cases had looked that prior weekend. The claimant and the baker then worked together on a production list. The claimant was frustrated over this criticism and at approximately 11:00 a.m., she requested a meeting with Chuck Ireland and Al Dix. During that meeting the claimant told them that she was leaving and that she likely would not return. She then left prior to the end of her shift. That evening she called Chuck Ireland and said that she would not be coming back. At no time did the employer request her resignation or tell her that she was going to be discharged.

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(33) 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 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:

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

A quit is a separation initiated by the employee. 871 IAC 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 871 IAC 24.25.

The evidence in this case established that the claimant voluntarily quit without good cause attributable to the employer. The claimant testified that she made the decision to quit because she felt frustrated about the criticism she had received and did not know how to remedy the situation. The employer's witnesses stated that while there was indeed some criticism of the claimant's job performance there was no intention to terminate the claimant. Her resignation was not requested. The claimant intended to sever the employment relationship and did so by indicating that she was quitting and then leaving the workplace prior to the end of her shift.

Although the claimant perceived that she was being unfairly criticized, her belief that her job performance did not meet the employer's satisfaction and that she did not know how to "fix" the problem does not constitute good cause attributable to the employer. The employer did not ask the claimant to leave and continued work was available. Benefits are denied.

DECISION:

The decision of the representative dated June 8, 2009, reference 04, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid

wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css