

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH A LUNA
Claimant

APPEAL NO. 13A-UI-07978-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/26/12
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Joseph Luna filed a timely appeal from the June 25, 2013, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on August 6, 2013. Mr. Luna participated. Sabrina Bentler of Corporate Cost Control represented the employer and presented testimony through Tim Potts. Exhibits One and Three were received into evidence.

ISSUE:

Whether Mr. Luna separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joseph Luna was employed by Hy-Vee Drug Store as a part-time cashier and clerk from October 2012 and last performed work for the employer on April 1, 2013. Mr. Luna's usual work hours were 7:00 a.m. to 3:00 p.m. After the shift on April 1, Mr. Luna was next scheduled to work on April 4 at 7:00 a.m. Mr. Luna was absent from that shift and did not notify the employer of his need to be absent. The employer's attendance policy required that Mr. Luna telephone the store prior to the scheduled start of the shift and speak to a manager if he needed to be absent. Mr. Luna never read the handbook that contained the policy, but had received a handbook and was aware of the policy. Due to prior attendance issues, Tim Potts, Manager, required that Mr. Luna call in and speak directly to him if he needed to be absent. Mr. Luna was aware of that expectation. Prior to the absence on April 1, the employer had warned Mr. Luna that in light of his attendance history, he faced possible termination if he was again absent. After Mr. Luna was a no-call/no-show for the April 4 shift, he was a no-call/no-show for shifts on April 6 and April 8. Indeed, Mr. Luna never made contact with the employer or returned to the employment after April 1, 2013. After Mr. Luna was a no-call/no-show for three consecutive shifts, the employer concluded that the employment was done. Assistant Manager Phil Hunt had tried unsuccessfully to reach Mr. Luna during the absences. The employer had never told Mr. Luna that he was actually discharged from the employment.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

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.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The weight of the evidence indicates that Mr. Luna voluntarily quit for personal reasons and without good cause attributable to the employer by failing to report for work or make contact with the employer after April 1, 2013. The employer waited until Mr. Luna had been absent for three consecutive shifts before the employer concluded the employment was done. Though the employer had previously warned Mr. Luna that he would likely be terminated if he was again absent, the employer never actually notified Mr. Luna he was discharged from the employment. Based on the voluntary quit without good cause attributable to the employer, Mr. Luna is disqualified for benefits *based on the wages from Hy-Vee* until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Luna. However, because the quit was from *part-time* employment, Mr. Luna remains otherwise eligible for benefits, provided he meets all other eligibility requirements. This matter will be remanded for redetermination of Mr. Luna's eligibility for reduced benefits.

DECISION:

The agency representatives June 25, 2013, reference 03, decision is modified as follows. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits *based on the wages from Hy-Vee* until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits. The claimant remains otherwise eligible for benefits, provided he meets all other eligibility requirements. This matter will be remanded for redetermination of the claimant's eligibility for reduced benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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