

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY L KEHOE
Claimant

APPEAL NO. 11A-UI-11294-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/11/10
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 15, 2011, reference 06, which denied unemployment insurance benefits, finding the claimant voluntarily quit work on February 11, 2011, because of non-work-related illness or injury. After due notice was issued, a telephone conference hearing was held on September 22, 2011. The claimant participated personally. The employer participated by Ms. Paula Mack, hearing representative, and Ms. Kelly Nieland, human resource manager.

ISSUE:

At issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Timothy Kehoe was employed by Hy-Vee, Inc. from August 29, 2009, until February 11, 2011, when he voluntarily left work due to a non-work-related illness or injury. Mr. Kehoe worked as a part-time clerk and was paid by the hour.

The employer is willing to re-employ Mr. Kehoe as soon as he provides medical documentation that he is able to return to work and applies to return to employment. As of the date of hearing, Mr. Kehoe, although recovering from brain cancer, has not yet been released by his physician to return to work and therefore has not presented himself to Hy-Vee, Inc. and offer to perform services.

REASONING AND CONCLUSIONS OF LAW:

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

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.

The evidence in the record establishes that Mr. Kehoe left his employment with Hy-Vee, Inc. because of a non-work-related malady that prevented him from continuing to report to work. The claimant left his employment on February 11, 2011.

The evidence in the record establishes that Mr. Kehoe may return to Hy-Vee, Inc. upon recovery and after providing documentation to the employer that he is able to return to work. The claimant has not done so at the time of hearing.

Section 96.5-1-d of the Iowa Employment Security Law provides that an individual who has left employment because of illness or injury upon the advice of a licensed and practicing physician and who has immediately notified the employer of the reason for leaving may, after recovering from the illness, when recovery is certified by a licensed and practicing physician, return to the employer and offer to perform services. If the individual's regular work or comparable, suitable work is not available as so found by the department, the claimant may be eligible for unemployment insurance benefits at that time.

DECISION:

The representative's decision dated August 15, 2011, reference 06, is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Unemployment insurance benefits are withheld.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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