

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIM WEST**  
Claimant

**APPEAL NO. 09A-UI-10103-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**Original Claim: 06/07/09  
Claimant: Respondent (2/R)**

Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 - Overpayment

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated July 6, 2009, reference 01, which held that Kim West (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 30, 2009. The claimant participated in the hearing. The employer participated through Bob Taylor, Human Resources Manager; Ryan Humpel, Assistant Manager of Store Operations; Jeff Todd, Night Crew Chief; Brian Wood, Assistant Night Crew Chief; and employer representative Tim Spier. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed full-time as a night crew custodian and stocker from November 29, 1999 through January 28, 2009, when he voluntarily quit. He was paid vacation through February 20, 2009. The claimant stocked for the first couple years of employment then began working on floors, which he did for the next four years. However, he sustained a work-related injury while working on the floors and reinjured his ankle each year after that. The employer decided to put him back into stocking and assigned him the lighter products, but the claimant did not like stocking.

The claimant felt the assistant night crew chief was harassing him because he would direct him to do different tasks if the claimant had completed the task on which he was working. The night crew chief has standards in which full-time stockers are expected to move 40 pieces an hour while part-time stockers are expected to move 20 pieces an hour. The claimant was only moving an average of 25 pieces an hour, and on approximately January 3, 2009 the night crew

chief told him he had to pick up the pace. The claimant became angry and told him he quit, that he would be leaving at the end of the month.

The next day the claimant apologized and told the chief that he was getting evicted from the place he was renting at the end of the month because the house sold and he was moving to Tennessee. The claimant gave the store manager his address in Tennessee before leaving employment. At no time prior to the fact-finding interview did the claimant state that he was leaving his employment due to harassment from the assistant night crew chief.

The claimant filed a claim for unemployment insurance benefits effective June 7, 2009 and has received benefits after the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1. The evidence demonstrates the claimant voluntarily quit on January 28, 2009. The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify him. Iowa Code § 96.6-2.

871 IAC 24.25(2) 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:

(2) The claimant moved to a different locality.

The claimant contends that he quit his employment due to intolerable working conditions, but the evidence does not support that claim. The most significant reason this does not appear to be true is because the claimant never mentioned at the time he quit that this was the reason he was leaving but did mention that he was being evicted from where he was living and was moving to Tennessee. Although he may have had problems with the assistant night crew chief, the problems appear to have resulted from the assistant night crew chief assigning him additional duties when the claimant was done with what he had been doing. The claimant has failed to establish an intolerable working condition. The evidence confirms the claimant more than likely voluntarily quit because he was getting evicted and decided to move to Tennessee. While the claimant had compelling personal reasons to voluntarily quit his employment, these reasons do not constitute good cause attributable to the employer. Benefits are therefore denied.

Iowa Code § 96.3(7) 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. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an

overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

**DECISION:**

The unemployment insurance decision dated July 6, 2009, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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