

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY J CLAYTOR
Claimant

APPEAL NO: 09A-UI-18449-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/08/09

Claimant: Appellant (1)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury

STATEMENT OF THE CASE:

Bradley J. Claytor (claimant) appealed a representative's December 3, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 20, 2010. The claimant participated in the hearing and presented testimony from one other witness, Roxanne Claytor. Donna Wesley appeared on the employer's behalf. 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:

Did the claimant voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on July 30, 2008. He worked part time (25 – 37 hours per week) as a night stock person at one of the employer's Des Moines, Iowa store, working from 11:00 p.m. to about 7:00 a.m. His last day of work was on or about January 10, 2009.

The claimant had been hospitalized from about December 25 through December 29, 2008 for a psychological illness. He was released from the hospital with permission to return to work. However, the claimant's doctor had recommended that if possible the claimant find work that did not require that he work overnight, as his medication would make it difficult to work nights. The claimant did return to work and worked his regular overnight position several nights after December 29.

On about December 29 there had been a discussion between Ms. Wesley, the employer's human resources manager, and Ms. Claytor, the claimant's mother. Ms. Wesley and Ms. Claytor are sisters. During this conversation Ms. Wesley suggested there might be a position that the claimant could work at the store in customer service, where the latest he would work would be 10:00 p.m. This was relayed to the claimant, and Ms. Wesley heard him indicate

that he would not be interested; Ms. Claytor had indicated that was something that would have to be discussed between the claimant and Ms. Wesley. The claimant did not follow up by contacting the employer to see if there was a position available to him that would not require overnight work.

While the claimant continued to report for his regular shift for some additional nights after December 29, after January 10, 2009 he stopped reporting for his scheduled shifts and did not further communicate with the employer regarding his employment. On or about January 17 the employer concluded that the claimant had determined to quit his employment.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit, he would not be eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Under some circumstances, a quit for medical or health reasons is attributable to the employer. Iowa Code section 96.5-1. Where factors and circumstances directly connected with the employment caused or aggravated an employee's illness, injury, allergy, or disease can be good cause for quitting attributable to the employer. 871 IAC 24.26(6)b. However, in order for this good cause to be found, prior to quitting the employee must present competent evidence showing adequate health reasons to justify ending the employment, and before quitting must have informed the employer of the work-related health problem and inform the employer that the employee intends to quit unless the problem is corrected or the employee is reasonably accommodated. 871 IAC 24.26(6)b

Here the claimant has not presented competent evidence showing that his health reasons for quitting were attributable to the employment. Further, before quitting he did not inform the employer that he intended to quit unless the problem was corrected or reasonably accommodated. It was the claimant's responsibility to discuss other employment arrangements with the employer, not the employer's responsibility to seek the claimant out to attempt to provide other options. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied.

DECISION:

The representative's December 3, 2009 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of January 17, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs