

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LISA A HARMON**  
Claimant

**APPEAL NO: 12O-UI-13891-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 05/13/12**  
**Claimant: Respondent (2/R)**

Iowa Code § 96.5(1) – Voluntary Quit

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 18, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because her employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Bruce Burgess, a Corporate Cost Control representative, appeared on the employer's behalf. Jeff Bortell, the store director, and Ryan Parker, the manager of perishables, testified on the employer's behalf. A decision was issued on September 5, 2012. See decision for appeal number 12A-UI-07395-DWT.

The claimant appealed the decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing because of inaudible testimony.

On December 18, 2012, another hearing was held. The claimant had her husband, Dean Harmon, testify and appear on her behalf. Bruce Burgess, a Corporation Cost Control representative, appeared on the employer's behalf. Jeff Bortell, the store director, and Ryan Parker, the manager of perishables in May, testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits, or did the employer discharge her for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in August 1998. She worked as a full-time kitchen clerk and breakfast cook.

Prior to May 5, 2012, the claimant's job was not in jeopardy. The claimant believed Parker considered her a complainer and did not especially like her.

On May 5, 2012, the kitchen manager told the claimant he was frustrated with her because he had to return money to a customer because she had not made a BLT sandwich for him. The claimant told the kitchen manager she had not received the order. The claimant apologized to the customer and told him she had not received his order. The customer did not wait for his sandwich and his money was returned to him. Later that morning the claimant noticed the kitchen manager talking to Parker.

After Parker finished talking to the kitchen manager, the claimant asked to talk to Parker. The claimant asked him what she should do if someone ordered a lunch item during breakfast hours. In the 14 years the claimant had worked for the employer lunch menu items had not been cooked during breakfast hours. Parker told her to work in the lunch menu item because the employer served customers, the grill was already on and the employer did not want to turn any customer away. The claimant then complained about other employees not serving customers. Parker responded by telling her that he received a complaint that she had refused to help a co-worker with the hot case. The claimant denied that she refused to help. During their conversation, the claimant felt Parker questioned her honesty. She was emotionally hurt by this. Finally, Parker told the claimant that she needed to focus on what she could do for the department and not worry about what other employees did or did not do.

Parker observed that the claimant was upset and concluded she was upset because she did not like what he told her. The claimant concluded that Parker was frustrated and upset with her. During many conversations, Parker has told the claimant that if she did not like something, she could leave or quit her employment. On May 5, Parker understood the claimant quit when she picked up her purse and clocked out about 90 minutes early. The claimant was upset when she left work. Parker did not try to stop the claimant from leaving work early.

Before the claimant clocked out, she noticed Bortell was not in his office. She did not ask anyone to contact him so she could talk to him right away. After the claimant left, Parker talked to Bortell and told him the claimant had said she quit and left work early. As a result of the claimant leaving work early, the kitchen was short-staffed. Bortell was not happy that the claimant walked off the job.

When the claimant came home, she was very upset. She told her husband she had just lost her job. The claimant's husband advised her to calm down and call Bortell. After she calmed down, the claimant called and talked to Bortell. Based on his conversation with Parker, Bortell knew the claimant left work early and was not happy she had done this. He also understood that she told Parker she had quit. The claimant told Bortell her version of what happened between her and Parker. She made a comment that she lost her job, but did not ask Bortell if she still had her job. Bortell considered the claimant to have quit on May 5 when she walked off the job early. Therefore, he did not confirm that she no longer had a job.

The claimant next called Bortell on May 9 or 10 to see if she could have her job back. Bortell told her that her position had been replaced with another person. The claimant established a claim for benefits during the week of May 13, 2012.

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

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer, or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a.

The claimant testified that Parker told her to leave on May 5 and she assumed he had the authority to discharge her. Parker testified that when the claimant was upset she told him she quit and walked off the job early. As a 14-year employee, the claimant knew or should have known Parker did not have the authority to discharge her, only the store director had this authority. The claimant's contention that Parker told her to leave on May 5 does not mean that he discharged her. Telling an employee to leave work is not equivalent to discharging an employee. The evidence does not establish that the employer discharged the claimant.

When the claimant left work early on May 5, she was frustrated, hurt and very upset. The claimant did not try to talk to Bortell to resolve issues she had with Parker before she left work early on May 5. As soon as the claimant left work Parker talked to Bortell. The claimant's failure to immediately talk to Bortell before she left indicates how frustrated and hurt she was. She felt Parker attacked her honesty during their conversation. The claimant talked to Bortell after her husband advised her to calm down and call him. During her conversation with Bortell she did not ask if she still had a job or what she could do to continue working. Bortell did not tell the claimant if she still had her job or not on May 5. It was not until May 9 or 10 when the claimant asked Bortell if she could have her job back that he told her she had been replaced. The fact the claimant was upset and frustrated with Parker on May 5, walked off the job and did not talk to Bortell before she left and did not ask Bortell what she could do to continue her employment when she talked to Bortell on the phone on May 5 are all factors that indicate she intended to quit on May 5 when she left work early.

When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6(2). The law presumes a claimant quits without good cause when she leaves employment because of conflict with a supervisor or after receiving a reprimand. 871 IAC 24.25(21) & (28).

It is understandable why the claimant became upset when the employer questioned her honesty after she reported that she had not refused to cook a customer's order and had not refused to help a co-worker with the hot case. When she was emotionally upset, she left work on May 5 instead of talking to Bortell to resolve issues.

Even though the claimant had personal reasons for walking out on May 5, she quit for reasons that do not qualify her to receive benefits. As of May 13, 2012, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment of benefits she may have received since May 13 will be remanded to the Claims Section to determine.

**DECISION:**

The representative's June 18, 2012 determination (reference 01) is reversed. The claimant voluntarily quit her employment when she walked off the job early on May 5. The claimant established personal reasons for quitting, but these reasons do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 13, 2012. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/tll