

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD W MEADS
Claimant

APPEAL NO. 08A-UI-08499-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/31/08 R: 12
Claimant: Respondent (2-R)

Section 96.5(1)c – Quit/Family Medical

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated September 19, 2008, reference 01. The decision allowed benefits to the claimant, Edward Meads. After due notice was issued, a hearing was held by telephone conference call on October 8, 2008. The claimant participated on his own behalf. The employer participated by Manager of Store Operations Cindy Van Renterghem and Assistant Director John Johnson, and was represented by Unemployment Insurance Services in the person of Jeff Oswald.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Edward Meads was employed by Hy-Vee from January 29, 2004 until August 8, 2008 as a full-time assistant produce manager in the Grinnell, Iowa, store. He gave a verbal resignation to Produce Manager Gary Green and Store Director Tim Potts. The reason for his resignation was because he had to move out of state to care for his mother, who was seriously ill. At the time of the hearing, his mother had not recovered and Mr. Meads has not returned to Hy-Vee and offered to return to work.

Edward Meads has received unemployment benefits since filing a claim with an effective date of August 31, 2008.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-c 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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

The claimant quit for the sole purpose of caring for an ill family member. He has not returned to the employer to offer his services, because his family member has not sufficiently recovered. Under the provisions of the above Administrative Code section, this is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which he is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of September 19, 2008, reference 01, is reversed. Edward Meads is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. The question of whether the claimant must repay these benefits is remanded to the UIS division.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw