

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA M ELWOOD
Claimant

APPEAL NO. 09A-UI-02190-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 11/30/08
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 3, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits based upon her separation from Hy-Vee, Inc. After due notice, a telephone conference hearing was scheduled for and held on March 5, 2009. Ms. Elwood participated personally. The employer participated by Jason Busswitz, Human Resources Manager.

ISSUE:

The issue in this matter is whether the claimant voluntarily quit employment for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered the evidence in the record, finds: The claimant was employed by Hy-Vee, Inc. from December 29, 2007 until February 24, 2008 when she voluntarily left employment. The claimant was hired as a part-time courtesy clerk (bagger) and was paid by the hour.

Ms. Elwood left her employment with Hy-Vee, Inc. on February 24, 2008 when she reasonably concluded that the work as a sacker was having a detrimental effect on her health. Ms. Elwood suffers from multiple sclerosis and believed at the time of hire that she was being hired for the position of a "checker." The claimant believed that after a short period of training she would be given the position of checker and that those duties would not have a negative impact upon her health.

Under company policy, employees are hired in the position of courtesy clerks (baggers) as a form of training and an opportunity for the employer to assess whether an employee has the skills necessary to be promoted to the position of cashier. The claimant was not aware at the time of hire the length of time that it might take for her promotion to cashier. Although the employer accommodated Ms. Elwood by reducing her hours at her request, the claimant nevertheless reasonably concluded based upon her deteriorating physical condition that the

work was a bagger was detrimental. The claimant had been under the care of a physician who had confirmed the claimant's opinion that she should not be performing that type of work based upon her medical condition.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant voluntarily quit with good cause attributable to the employer. It does.

Here, although the employer acted in good faith in hiring the claimant as a courtesy clerk, a training position for a checker, the claimant was not aware that her promotion to checker could be substantially delayed by factors beyond her control. Ms. Elwood believed that she would be given the position of cashier within a short period of time after being hired and that the position of cashier would not negatively impact her medical condition. The claimant had been advised by her physician that performing the duties of a grocery bagger was not conducive to her physical health. The claimant decided to leave her position after becoming extremely exhausted after performing a three-hour shift and falling attempting to walk to her car.

The administrative law judge concludes based upon the totality of the evidence in the record that the claimant did not clearly understand and it was not clearly conveyed to her the length of time that she would be required to be maintained in a training status as a bagger. The claimant reasonably concluded that remaining in that position would have a detrimental effect on her health and, therefore, left employment.

871 IAC 24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

For the reasons stated herein, the administrative law judge concludes the claimant left with good cause attributable to the employer. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 3, 2009, reference 01, is affirmed. The claimant quit work with good cause. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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