

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY GRANT
Claimant

APPEAL NO. 15A-UI-11489-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/06/15
Claimant: Appellant (4/R)

Iowa Code Section 96.5(1) – Voluntary Quit

871 IAC 24.22(2)(j) – Reemployment at the End of a Negotiated Leave of Absence

871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Amy Grant filed a timely appeal from the October 8, 2015, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that Ms. Grant had voluntarily quit on June 21, 2015 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 29, 2015. Ms. Grant participated. Dane Swenson, of Corporate Cost Control, represented the employer and presented testimony through Keely McDonald and Beth Hennessey. The hearing in this matter was consolidated with the hearing in Appeal No. 15A-UI-11490-JTT. Exhibits One, Two, and Three were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant.

ISSUES:

Whether Ms. Grant separated from the employment for a reason that disqualifies her for benefits or that relieves Hy-Vee of liability for benefits.

Whether Ms. Grant has been on a leave of absence at any point since she established the claim for benefits that was effective September 6, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Amy Grant was employed by Hy-Vee as a part-time floral clerk from November 2014 until June 14, 2015; when she voluntarily quit to focus on her academic studies. Ms. Grant's immediate supervisor was Beth Hennessey, Floral Manager. On June 3, 2015, Ms. Grant spoke to Keely McDonald, Human Resources Manager, to provide a two-week notice that she would be leaving the employment effective June 17, 2015 to focus on her upcoming clinicals. Ms. Grant was in training to become a massage therapist and the clinicals were part of that training. The Floral Manager, Ms. Hennessey, was on vacation at the time. Ms. Grant told the employer that she would be graduating from the message therapist program in August 2015. Ms. McDonald told

Ms. Grant that she was welcome to return to the employment when she completed her studies. Ms. McDonald told Ms. Grant that Hy-Vee would find a position for her even if no position was available in the floral department. Ms. Grant asked Ms. McDonald whether it would be best for her to quit or to take a leave of absence. Ms. McDonald told Ms. Grant that it would be best if she indicated she was taking a leave of absence.

Ms. Hennessey learned of Ms. Grant's plan to leave the employment when Ms. Hennessey arrived at work on June 14, 2015 and found a note that Ms. Grant had left for her. Ms. Grant's note included the following: "I really enjoy working with you and for you and look forward to returning after graduation in August!"

At the time Ms. Grant worked her last day for Hy-Vee, the employer continued to have the same work available for her. Indeed, Ms. Hennessey had Ms. Grant on the schedule to work on June 18, 19, and 21, 2015. The schedule including those days had been posted at the end of May 2015.

Ms. Grant graduated from her program of study in August 2015 but did not contact Hy-Vee at that time about returning to the employment. In September and October 2015, Ms. Hennessey encountered Ms. Grant at the Hy-Vee store when Ms. Grant was there to do grocery shopping. Ms. Grant made no effort to contact Ms. McDonald or Ms. Hennessey about returning to the employment. As of the appeal hearing on October 29, 2015, Ms. Grant had still made no attempt to contact the employer about returning to the employment.

Ms. Grant established a claim for unemployment insurance benefits that was effective September 6, 2015. Workforce Development calculated Ms. Grant's weekly benefit amount at \$431. Ms. Grant received that amount for the weeks ending September 12, 19, and 26, 2015. The total amount disbursed to Ms. Grant for the three-week period was \$1,293.

Ms. Grant's "base period" for purposes of the claim that was effective September 6, 2015 consists of the second, third, and fourth quarters of 2014 and the first quarter of 2015. Hy-Vee was one of the base-period employers. Great America Financial Services was the other base-period employer. The \$431 weekly benefit amount is based on wages from both employments.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code § 96.5-1 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.

Iowa Admin. Code r. 871-24.25(26) 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:

(26) The claimant left to go to school.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Despite the parties' decision to call the June 17, 2015 separation a leave of absence at that time, the evidence in the record establishes that Ms. Grant voluntarily quit the employment effective June 17, 2015 to focus on her studies. The separation was without good cause attributable to the employer. If there was any doubt regarding whether Ms. Grant voluntarily quit the employment, Ms. Grant provided clarity by not returning to the employment in August 2015 upon graduating from her program of study. The weight of the evidence indicates that the parties had agreed that Ms. Grant would return at that time. Ms. Grant has not been on a leave of absence at any time since she established the claim for benefits that was effective September 6, 2015.

Because the voluntarily quit was without good cause attributable to Hy-Vee, that employer is relieved of liability for benefits paid to Ms. Grant. In addition, Ms. Grant is disqualified for benefits based on the base-period wages from the Hy-Vee employment until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Grant must meet all other eligibility requirements. Because the voluntary quit was from part-time employment, Ms. Grant remains eligible for reduced benefits based on wages from the other base-period employer, provided she meets all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for determination of the reduced benefits that excludes the Hy-Vee wages.

DECISION:

The October 8, 2015, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment effective June 17, 2015 without good cause attributable to the employer. The employer's account will not be charged for benefits. The claimant is disqualified for benefits based on the base-period wages from this employer until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. Because the voluntary quit was from part-time employment, the claimant remains eligible for reduced benefits based on wages from the other base-period employer, provided she meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for determination of the reduced benefits that excludes the Hy-Vee wages.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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