

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTONETTE GREER
Claimant

APPEAL NO. 07A-UI-04714-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/01/07 R: 03
Claimant: Appellant (3R)

Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Antonette Greer filed a timely appeal from the May 7, 2007, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on May 24, 2007. Claimant participated. Rob Green, Manager of Store Operations, represented the employer and presented additional testimony through Ryan Milnes, Kitchen Manager. Exhibits One, A, B, and C were received into evidence.

ISSUE:

Whether the claimant voluntarily quit her part-time employment for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Antonette Greer was employed by Hy-Vee as a part-time kitchen clerk from November 9, 2006 until January 8, 2007, when she voluntarily quit. Ms. Greer last performed work for Hy-Vee on December 31, 2006. Ms. Greer receives services from Goodwill Industries. On January 8, Ms. Greer went to the Hy-Vee store with her Goodwill job coach. Ms. Greer did not actually go into the store, but sent her job coach in to notify the employer that she was resigning her position effective immediately. Ms. Greer did not provide a reason for the quit, but her job coach indicated that the work had made Ms. Greer nervous and caused her to have an upset stomach.

At the hearing, Ms. Greer asserted that she had quit for medical reasons. However, Ms. Greer did not provide the employer with medical documentation regarding any medical circumstances. Prior to quitting, Ms. Greer did not notify the employer that she would need to quit for medical reasons and did not request any workplace accommodations. Ms. Greer called in sick a number of times during the brief employment. When Ms. Greer called in her absence on December 24, she indicated that her back hurt, that she taken medication, and that the medication made her sick. This was the only reference Ms. Greer made to her back in the course of her contact with the employer. Ms. Greer had gone to the emergency room on

December 24, 2006 in response to back pain and was released to return to work on December 25. Ms. Greer had followed up with a medical clinic on December 26 and was released to return to work on December 29. After the appointment on December 26, Ms. Greer did not return to the medical clinic until April 2007. Since April, Ms. Greer has been seen at the medical clinic three times for ongoing back issues. On May 17, 2007, in preparation for the appeal hearing, Ms. Greer obtained a note from a physician's assistant at the medical clinic. The note indicates that Ms. Greer had recurrent episodes of back pain since late December 2006 and that her provider had recommended she avoid work requiring bending or lifting. However, any such recommendation followed Ms. Greer's separation from the employment. Ms. Greer indicates she is still subject to a 20-pound lifting restriction.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d 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:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.26(6)a 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:

(6) Separation because of illness, injury, or pregnancy.

a. Nonemployment related separation. The claimant left because of illness, injury or pregnancy upon the advice of a licensed and practicing physician. Upon recovery, when recovery was certified by a licensed and practicing physician, the claimant returned and offered to perform services to the employer, but no suitable, comparable work was available. Recovery is defined as the ability of the claimant to perform all of the duties of the previous employment.

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.

The evidence in the record fails to establish, by a preponderance of the evidence, that Ms. Greer's back condition was related to her short employment at Hy-Vee. The evidence indicates instead that the back condition is non-work-related. The greater weight of the evidence indicates that Ms. Greer's quit was not in fact based on the advice of a licensed practicing physician. The evidence indicates that Ms. Greer has not fully recovered from her back condition. The evidence indicates that Ms. Greer has not returned to the employer to offer her services and after fully recovering from the back condition.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Greer voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Greer is disqualified for benefits based on wage credits earned from the employment with Hy-Vee until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Greer.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not requalified 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. Ms. Greer may be eligible for reduced benefits based on wage credits she is earned from base period employers other than Hy-Vee. This matter will be remanded to a claims representative so that Ms. Greer's eligibility for reduced benefits may be determined.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The evidence presented at the hearing raises the question of whether Ms. Greer has been able to work and available for work since establishing her claim for benefits. Accordingly, that issue will also need to be addressed upon remand to a claims representative.

DECISION:

The Agency representative's May 7, 2007, reference 03, decision is modified in favor of the appellant/claimant. The claimant voluntarily quit the part-time employment without good cause attributable to the employer. The claimant is disqualified for benefits based on base period wage credits she earned from this employer until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. Because the employment was part-time, the claimant may be eligible for reduced benefits based on base period wage credits earned from employers other than this one. The matter is remanded to a claims representative for

determination of the claimant's eligibility for reduced benefits and to address whether the claimant has been able to work and available for work since establishing her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css