

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALTHENA J FANNON
Claimant

APPEAL NO. 06A-UI-10646-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/08/06 R: 03
Claimant: Respondent (2)

Section 96.5-1 - Voluntary Quit
Section 96.3-7 - Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 31, 2006, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on November 16, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Brenda Mason. David Williams participated in the hearing on behalf of the employer with witnesses, Scott Younberg, Scott Gilbert, Keith Kadlee, Careta Crill, and Dawn Biederman.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a kitchen clerk from June 23, 2000, to October 6, 2006. Her supervisor was the assistant kitchen manager, Dawn Biederman.

The claimant quit her employment after a series of conflicts with Biederman during which the claimant believed she was being unfairly criticized by Biederman. For example, Biederman objected to the claimant putting parsley as a garnish on food items in the hot case. They got into a dispute about how the claimant was rounding pennies when billing customers for catered coffee. The claimant had complained about working under Biederman to the kitchen manager, Keith Kadlee; the store manager, Scott Youngberg; and the store operations manager, Scott Gilbert. She has requested a transfer to a different department or another store.

The final incident happened in late September 2006 when Biederman questioned the claimant about the multiple smoke breaks she was taking. In general, employees are entitled to a 30-minute break during their shift but are allowed to reserve five minutes for a second break during the shift. Kadlee had allowed the claimant to split the five minutes by taking more than one short smoke break. The claimant started leaving to take a short smoke break without asking Kadlee or a supervisor if it was okay. When Biederman questioned the claimant about

this, the claimant asserted Kadlee had approved her splitting her five minutes. Biederman asked Kadlee who responded that he had not given the claimant permission, which was not truthful, but Biederman would not have known this. Biederman went back to the claimant and accused her of lying about what Kadlee had said. She told the claimant that she was not allowed to split her smoke breaks anymore. This upset the claimant greatly and she decided that she was not going to talk to Biederman from that point on unless it was absolutely necessary.

Biederman complained that the claimant was not talking to her. On October 6, 2006, Gilbert called the claimant into his office. He told her that she was going to have to start being friends with Biederman or she would not be allowed to transfer. The claimant said she would work with Biederman but could not be forced to be friends with her.

The next day, the claimant decided to quit her employment because she believed that she would not ever be allowed to transfer out from under Biederman's supervision and could not tolerate working for Biederman anymore.

Biederman did not single out the claimant for treatment that she would not have given other employees who conducted themselves in the same way. The claimant was sensitive to others telling her what to do or offering suggestions. The issues Biederman spoke to the claimant about were matters she had the right as a supervisor to question. For example, since the claimant was leaving the kitchen multiple times during her shift to take smoke breaks when the general rule was that one break was allowed beside the lunch break, Biederman was within her rights to question the claimant about it.

The claimant filed for and was paid a total of \$933.00 in unemployment insurance benefits for the weeks between October 8 and November 18, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.25(22) 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 section 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 section 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:

(22) The claimant left because of a personality conflict with the supervisor.

The evidence fails to establish intolerable working conditions. At most, the claimant has demonstrated that she had a personality conflict with her supervisor, which would not meet the standard of good cause attributable to the employer. The claimant claimed that she was criticized unjustly but when pressed had tremendous difficulty in presenting examples of what she meant. The examples she provided did not establish intolerable working conditions.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$933.00 in benefits for the weeks between October 8 and November 18, 2006.

DECISION:

The unemployment insurance decision dated October 31, 2006, reference 01, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until she has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant was overpaid \$933.00 in unemployment insurance benefits, which must be repaid.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs