

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TONJA J NOWLEN
Claimant

HY-VEE INC
Employer

APPEAL 15A-UI-05643-KC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 7, 2015, (reference 02) unemployment insurance decision that denied benefits based upon voluntary quitting. The parties were properly notified about the hearing. A telephone hearing was held on June 18, 2015. The claimant participated. The employer participated through representative Bruce Burgess and witnesses: Bob Taylor, human resources manager; Lisa Frisch, floral manager; and Matt Arnold, manager of store operations. Exhibit 1 was received into evidence.

ISSUE:

Was the claimant discharged for work-related, disqualifying misconduct or did she voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time beginning September 26, 2012. She was a floral clerk. She last worked on March 21, 2015. She was separated from employment on March 29, 2015.

On March 21, 2015, the claimant told Taylor and floral department staff-person Kay Coyle that her parole officer advised her that she would need to report to jail in South Dakota for an undetermined time period due to a parole violation. She was not scheduled to work for two to three days after March 21, 2015. She asked to be taken off the schedule but did not have paid time off to use for additional days of absence. The schedule was already set. Taylor told her that he would identify her absences for scheduled days as unexcused. Taylor told her to call Hy-Vee Floral Department Supervisor Lisa Frisch upon her release from jail. Taylor completed an employee termination report which indicated she abandoned her job after failing to show for work or call on: March 26, 2015; March 27, 2015; and March 29, 2015. (Exhibit 1)

The claimant was in jail for approximately two weeks. She had no contact with the employer between March 21, 2015 and April 4, 2015. She called Hy-Vee Floral Department Supervisor Lisa Frisch on or about April 4, 2015. The claimant reported that she had been released. Frisch had filled the claimant's position during her absence. The employer did not know when the claimant would return.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

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(16) 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:

- (16) The claimant is deemed to have left if such claimant becomes incarcerated.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

In the context of the Iowa Employment Security Law, an individual who separates from employment because of incarceration is presumed to have quit without good cause attributable to the employer. 871 IAC 24.25(16). The claimant's incarceration on multiple scheduled workdays was not a good-cause reason for the separation attributable to the employer based upon a voluntary leaving of employment. In addition, an employer is not expected to hold employment for incarcerated employees regardless of prior warning or attendance history. Benefits are denied.

DECISION:

The May 7, 2015, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Kristin A. Collinson
Administrative Law Judge

Decision Dated and Mailed

kac/mak