

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISE COLEMAN
Claimant

APPEAL 15A-UI-05993-EC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/19/15
Claimant: Appellant (1)

Iowa Code §96.5(1) – Voluntary Quit
Iowa Code §96.4(3) – Able and Available to Work
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant, Denise Coleman, filed an appeal from the May 13, 2015, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit, following a leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on June 24, 2015. The claimant participated. The employer participated through Aaron Heyer, employer representative; and through Linda Pochobradsky, HR Manager at the Mount Vernon Road Hy-Vee Store in Cedar Rapids, Iowa.

ISSUES:

Was the separation a voluntary quit with or without good cause attributable to the employer?

Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a cashier and then as a kitchen clerk, at the Hy-Vee store on Mount Vernon Road in Cedar Rapids, Iowa, from September 6, 2014, until April 19, 2015, when she failed to report back to work after her approved leave of absence ended.

The claimant worked a variable part-time schedule at the Hy-Vee store. Her last day of work for this employer was November 29, 2014. She requested a leave of absence, beginning in December of 2014 or January of 2015, through April 17, 2015, to work in her usual seasonal job at H & R Block, preparing income tax returns. Her employer approved this leave of absence for this purpose.

The employer expected the claimant to return soon after the income tax season ended in April. The employer's HR Manager, Linda Pochobradsky, called the claimant soon after April 15, 2015, asking if she was ready to return to work at the Hy-Vee store. The claimant did not want

to come back to work at Hy-Vee until September of 2015. Ms. Pochobradsky told the claimant that she was needed at that time, in April, and that she would really be needed in August, when many student employees return to school. The claimant did not return to work for this employer.

The claimant's leave of absence was approved for a certain period of time, through mid-April. She was expected to report for work soon after the income tax season ended. She failed to do so. Continuing work was available for the claimant if he returned to work at the Hy-Vee store. The claimant's employment was not officially terminated, because she was expected to return.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not on an approved leave of absence after April 19, 2015.

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. 871-24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. 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.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) 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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Iowa Admin. Code r. 871-24.22(2)j(1)(2) provides:

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that

sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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The claimant requested and was given a leave of absence to work at a seasonal job for a certain period of time. She was on an approved leave of absence until April 19, 2015. She did not return to work on the date her employer expected her to return. For all practical purposes, the claimant voluntarily quit this employment when she failed to return to work following the approved leave of absence.

Accordingly, under the plain language of the governing statutes and regulations, benefits are denied.

DECISION:

The May 13, 2015, (reference 01) decision is affirmed. The claimant did not return to work at the end of her approved leave of absence and is considered as having voluntarily quit her employment. Benefits are denied.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/mak