

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAMS, CYNTHIA, A
Claimant

APPEAL NO. 12A-UI-06146-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/06/12
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 22, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 19, 2012. Claimant Cynthia Adams participated. Sebrina Bentler of Corporate Cost Control represented the employer and presented testimony through Cathy Krieger and Chad Hartogh.

ISSUE:

Whether Ms. Adams' voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Cynthia Adams was employed by Hy-Vee, Inc. as a part-time kitchen employee until April 4, 2012, when she voluntarily quit. Ms. Adams' immediate supervisor was Kitchen Manager Brendan Meyers. On February 17, 2012, Ms. Adams commenced an approved leave of absence. Ms. Adams asked for the leave of absence because she was unhappy with a bossy coworker and with the employer's response to her concerns about the bossy coworker. The bossy coworker, Diana, was a newer employee who was trying to impress the employer and others with how conscientiously she performed her duties. Until the employer made Diana change her conduct, Diana made unsolicited comments about various things in the workplace that she did not think were appropriate or optimal. Diana sometimes spoke to Ms. Adams and others as if she had some special relationship with the management team when she had no such relationship. Ms. Adams and others found Diana's comments and conduct irritating. Shortly before Ms. Adams requested her leave, Diana brought a notebook to work and started keeping notes about things that happened in the workplace. On February 12, Diana took a picture of the work schedule to document that Ms. Adams had started work an hour earlier than scheduled.

On February 13, Ms. Adams asked Mr. Meyers to arrange a meeting with Store Director Chad Hartogh to discuss her concerns about Diana. Mr. Meyers agreed to do so. Instead of waiting for Mr. Meyers to get back to her about the meeting with Mr. Hartogh, Ms. Adams went to the workplace on February 15 and spoke to Assistant Kitchen Manager Quinn Rudd. Ms. Adams reviewed with Mr. Quinn her list of complaints about Diana.

On February 16, Mr. Meyer sent Ms. Adams a text message to let her know he had arranged a meeting with Mr. Hartogh and on February 17 at 1:00 p.m. Ms. Adams had already been in contact with several coworkers to alert them to the fact that she had requested a meeting with the Store Director and to enlist her to join her at the meeting. Neither Mr. Meyers nor Mr. Hartogh authorized or invited other employees to join the meeting. After Ms. Adams learned of the meeting time, she alerted several coworkers to the meeting time. Some indicated they were electing not to appear. One later suggested that the employer had dissuaded her from attending the meeting. Ms. Adams took this as a sign of extreme bad faith on the part of the employer.

On February 17, Ms. Adams got her meeting with Mr. Hartogh, Mr. Meyer, and an assistant manager, Tracy. Mr. Hartogh had already spoken to Diana and another employee in an attempt to understand what the interpersonal issues were in the kitchen area. During the meeting on February 17, Ms. Adams told Mr. Hartogh about Diana referring to herself as a chef, about Diana saying she was going to report things to Mr. Hartogh, and about Diana commenting on Ms. Adams' friendship with Mr. Meyer. Ms. Adams became upset when Mr. Hartogh asked, "What about you?" Mr. Hartogh said that it sounded like Ms. Adams had badmouthed Diana to others. Ms. Adams had in fact been badmouthing Diana to other employees the same way, or worse than, the way she thought Diana had been badmouthing her. Mr. Hartogh told Ms. Adams that if she wanted to take a leave of absence, she could. Ms. Adams indicated that she did want to take a leave of absence so that other kitchen staff could have her hours and so that she could visit her other residence in Wisconsin. The kitchen had recently lost a catering contract and this was going to impact employees' work hours. The meeting ended with Ms. Adams commenting that she liked working at Hy-Vee and that Hy-Vee was a safe place. Mr. Hartogh told Ms. Adams that he intended to keep it that way. Mr. Hartogh told Ms. Adams that he would take her comments and speak with the kitchen staff. Ms. Adams indicated that she still wanted to take a leave.

After the February 17 meeting, Mr. Hartogh spoke with Diana regarding the complaints about her comments and conduct. Diana acknowledged that she could improve and changed her conduct. Mr. Hartogh also alerted Cathy Krieger, Corporate Human Resources Supervisor, to the interpersonal issues amongst the kitchen staff and of Ms. Adams' leave of absence.

Ms. Adams continued on an approved leave of absence until April 4. While Ms. Adams was on leave, Ms. Adams' elderly mother contacted the employer to express concern about Ms. Adams' employment situation. Ms. Krieger contacted Ms. Adams to discuss Ms. Adams' concerns. Ms. Adams told Ms. Krieger about Diana's comments and conduct, including the notebook. Ms. Krieger told Ms. Adams she would look into the matter. Ms. Adams told Ms. Krieger that she would not be returning to Iowa until the end of March or beginning of April.

On April 3, Ms. Adams went to the workplace unannounced and spoke with the Chinese department supervisor, Nathan. The Chinese department shared space with the rest of the kitchen staff. Ms. Adams spoke to Nathan about working in the Chinese department. Nathan indicated he could use her.

On April 4, Ms. Krieger telephoned Ms. Adams to see whether she was available to meet in person. Ms. Adams said she was not available for the time Ms. Krieger wanted to meet. Ms. Adams added that she would need more time to set up an appointment to meet with Ms. Krieger because she needed to have an attorney present. Ms. Adams also mentioned having spoken to Nathan in the Chinese department. Ms. Adams told Ms. Krieger that she could not trust anyone at the Hy-Vee store except the Chinese department staff. Ms. Krieger

raised the issue that the Chinese department was right next to the kitchen area. Ms. Adams told Ms. Krieger she was not sure whether she wanted to return to the employment if Diana continued with Hy-Vee. Ms. Adams said she did not want to report to Mr. Meyers or Mr. Hartogh. Ms. Adams said that she probably would not go back and that she had no respect for the store. Ms. Adams told Ms. Krieger that she had spoken to two other employees and knew that Diana had been told to keep her mouth shut, that Diana had been told not to have a notebook, that Diana had been told to be nice to others, and that Diana had been nice so far. Ms. Adams ultimately told Ms. Krieger that she did not want to return to work. Ms. Krieger agreed to pass the information along.

Hy-Vee, Inc. was Ms. Adams' sole base period employer.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

This case is most noteworthy for the level of drama that Ms. Adams brought to the workplace. Ms. Adams started out with legitimate concerns about the conduct of a coworker who was irritating Ms. Adams and others through conduct and comments that exceeded the coworker's authority. Ms. Adams quickly moved well beyond having a legitimate complaint to attempting to get the entire kitchen staff involved in a melodrama largely of Ms. Adams' making. When Ms. Adams brought her concerns to her immediate supervisor, Mr. Meyer, the supervisor agreed to arrange a meeting with the store manager. Rather than wait for an orderly and reasonable resolution to her concerns, Ms. Adams broadcast her concerns to other staff and attempted to get them involved in her issues. It was no more appropriate for Ms. Adams to speak negatively about Diana than it was for Diana to engage in the comments and conduct that Ms. Adams found annoying. This is what the employer tried to point out to Ms. Adams during the meeting on February 17, but this was lost on Ms. Adams, who instead erroneously perceived the meeting as a personal attack on her. It was entirely reasonable for the employer not to invite a group of employees to engage in a group complaint session about a particular coworker. The employer took the reasonable, orderly, and discreet approach of speaking with employees individually. As Ms. Adams learned from her coworkers, the employer had indeed

taken her complaints seriously and had indeed redirected Diana's behavior. Even this was not enough for Ms. Adams, who at that point perceived Mr. Meyer and Mr. Hartogh as somehow having betrayed her and having acted in bad faith, when neither had done any such thing.

Ms. Adams' leave, and her voluntary quit, were not based on any intolerable and/or detrimental working conditions that would have prompted a reasonable person to leave the employment. Ms. Adams' leave and her voluntary quit were instead based on her inability to get along with a coworker, her one-directional personality conflict with two or more supervisors, and her dissatisfaction with the work environment. Ms. Adams' voluntary quit was without good cause attributable to the employer. See Iowa Admin. Code section 871 IAC 24.25(6), (21) and (22). Accordingly, Ms. Adams is disqualified for benefits 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. Adams.

Iowa Code section 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code section 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received would constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The Agency representative's May 22, 2012, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits 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.

This matter is remanded to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs