

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DOLORES M MEYER
208 N MAIN
CHARLES CITY IA 50616

HY-VEE INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

HY-VEE INC
TALX UC EXPRESS
4100 HUBBELL AVE #78
DES MOINES IA 50317-4546

Appeal Number: 04A-UI-02834-CT
OC: 08/31/03 R: 02
Claimant: Appellant (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit
Section 96.5(1)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Dolores Meyer filed an appeal from a representative's decision dated March 4, 2004, reference 08, which denied benefits based on her separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on April 7, 2004. Ms. Meyer participated personally and offered additional testimony from Todd Rackeweg, and Deborah Lincoln, Substance Abuse Counselor with Prairie Ridge Addiction Treatment Services. The employer participated by Pat Ohlerking, Store Director, and Megan O'Boyle Human Resources Coordinator. The employer was represented by David Williams of Talx UC Express.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Meyer began working for Hy-Vee, Inc. on September 16, 2003 as a part-time employee in the Chinese restaurant section of the store. She worked approximately 20 hours each week. Her last day at work was December 13 and she was next scheduled to work on December 16 and 17. Ms. Meyer is an alcoholic and was experiencing a relapse at about the time of her separation. She did not contact the employer on either December 16 or December 17. She contacted the store manager on December 18 to inquire as to whether she still had a job. It was Ms. Meyer's intent to quit at that point in order to enter a residential treatment program. The store director was to get back to her but did not. She called the store again on December 19 but the store director was not available. Ms. Meyer did not enter treatment until January 2, 2004. She did not make any further calls to the store after December 19 and never went to the store to talk with anyone in management about her situation.

Ms. Meyer was released from residential treatment on January 17, 2004. She did not contact the employer to re-offer her services after her release from treatment. Ms. Meyer filed an additional claim for job insurance benefits effective February 8, 2004. As of the date of the hearing herein, she still had not contacted Hy-Vee, Inc. about returning to work. Wage credits earned with Hy-Vee, Inc. have not been used in determining her eligibility for job insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Meyer was separated from employment for any disqualifying reason. She quit in order to enter treatment for alcohol abuse and, therefore, the administrative law judge concludes that the provisions of Iowa Code Section 96.5(1)d are applicable. Even construing these provisions in a light most favorable to Ms. Meyer, her separation would still be a disqualifying event. The evidence establishes that she entered treatment on the advice of her substance abuse counselor. Although she did not tell the employer she intended to enter treatment, she did make two telephone calls to the workplace to speak to management before she entered treatment. The administrative law judge presumes that, had her call been returned, the matter of her intentions would have been conveyed to the employer. However, the matter of whether she gave notice to the employer as required by Section 96.5(1)d is moot considering the fact that Ms. Meyer never returned to the employer to re-offer her services as required by the law. This factor is sufficient to result in disqualification under Section 96.5(1)d. Ms. Meyer has failed to establish that her quit was for some good cause attributable to the employer within the meaning of Iowa Code Section 96.5(1).

An individual who voluntarily quits part-time employment without good cause attributable to the employer may nevertheless qualify for job insurance benefits if there are sufficient other wage credits to establish a valid claim. See 871 IAC 24.27(96). Wage credits earned with the part-time employer that was quit may not be used on the claim until such time as the individual requalifies by earning ten times the weekly benefit amount in insured wages after the disqualifying separation. Hy-Vee, Inc. is not a base period employer on Ms. Meyer's claim. Therefore, those wage credits have not been used in determining her entitlement to job insurance benefits. Inasmuch as she has a valid claim without considering the Hy-Vee, Inc. wages, benefits are allowed to Ms. Meyer but will not be charged to the account of Hy-Vee, Inc.

DECISION:

The representative's decision dated March 4, 2004, reference 08, is hereby modified. Ms. Meyer voluntarily quit her part-time employment with Hy-Vee, Inc. for no good cause attributable to the employer but has sufficient other wage credits to establish a valid claim. Benefits are allowed, provided she satisfies all other conditions of eligibility. The account of Hy-Vee, Inc. will not be charged for benefits paid as a result of the decision herein.

cfc/b