

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTORIA ROBINSON
Claimant

APPEAL NO. 08A-UI-02792-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 02/24/08 R: 01
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's March 17, 2008 decision (reference 01) that concluded Victoria Robinson (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2008. The claimant participated in the hearing. Tim Spear of Unemployment Insurance Services appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on October 18, 2005. She worked full time as a barista at the coffee service in the employer's Council Bluffs, Iowa store, typically weekdays from 5:00 a.m. to 1:00 p.m. or 7:00 a.m. to 3:00 p.m. Her last day of work was January 31, 2008.

The claimant had some personality difficulties with a former barista who had kept telling the claimant how to do her job. The claimant complained to her manager about this coworker, and her manager spoke to the coworker. The coworker resigned a couple days thereafter, and was gone by January 28, 2008.

On January 31 the claimant was scheduled for a 6:30 a.m.-to-2:30 p.m. shift. That morning another barista, Ms. Davis, had opened the coffee shop. The claimant and Ms. Davis had been friends. At approximately 8:30 a.m. the claimant became upset as she believed that Ms. Davis was also harassing her by telling her how to do her job. She became so upset that she began to feel unwell. She approached the manager on duty, Mr. Hendricks, and asked if she could go home, as she was not feeling well, and he consented. However, the claimant then did not call

or return for her next shifts on February 1, February 2, and February 5. Several persons with the employer attempted to reach the claimant, including her immediate supervisor, Ms. Kimmish, and Ms. Vashon, the human resources manager, but the claimant did not return their calls, as she had decided not to continue her employment due to her feelings about Ms. Davis' treatment. The claimant had never brought any concerns regarding Ms. Davis to any management.

The claimant established a claim for unemployment insurance benefits effective February 24, 2008. The claimant has received unemployment insurance benefits after the separation from employment in the amount of \$1,422.00.

REASONING AND CONCLUSIONS OF LAW:

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for 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 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. 871 IAC 24.25(21), (6). While the claimant's work situation was perhaps not ideal, she has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973).

While a claimant does not have to specifically indicate or announce an intention to quit if her concerns are not addressed by the employer, for a reason for a quit to be "attributable to the employer," a claimant faced with working conditions that he considers intolerable, unlawful or unsafe must normally take the reasonable step of notifying the employer about the unacceptable condition in order to give the employer reasonable opportunity to address her concerns. Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005); Swanson v. Employment Appeal Board, 554 N.W.2d 294 (Iowa 1996); Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). If the employer subsequently fails to take effective action to address or resolve the problem it then has made the cause for quitting "attributable to the

employer.” Under this logic, if in the alternative the claimant demonstrates that the employer was independently aware of a condition that is clearly intolerable, unlawful, or unsafe, there would be no need for a separate showing of notice by the claimant to the employer; if the employer was already aware of an obvious problem, it already had the opportunity to address or resolve the situation. Here, there was no problem that was obvious to the employer and the claimant did not provide the employer with the necessary notice and opportunity to address the problem. The claimant has not satisfied her burden. Benefits are denied.

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.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's March 17, 2008 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of February 1, 2008, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$1,422.00.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw