

**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**

**RENEE S STOCKER  
316 OSKALOOSA ST  
PELLA IA 50219-2122**

**HY-VEE  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-06102-S2T  
OC: 05/07/06 R: 02  
Claimant: Respondent (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's June 5, 2006 decision (reference 02) that concluded Renee Stocker (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 6, 2006. The claimant participated personally. The employer was represented by David Williams, Manager of Operations and participated by David Hagan, Manager of Store Operations and Nate Son, Manager of General Merchandise. Marla Gentry observed the hearing.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 13, 2005 as a part-time cashier. On August 13, 2006, the claimant told the employer she was thinking of moving and inquired about a transfer. The employer was amenable to a transfer.

On March 18, 2006, the claimant went to work with strep throat. She had problems with her boyfriend and was trying to plan a move. The employer told her she could have the rest of the week off and she should call the employer when she was ready to be put back on the schedule. The claimant assumed she had until March 25, 2006 to return to work.

The claimant telephoned the manager of general merchandise on or about March 30, 2006. The manager of general merchandise told the claimant she should speak with the manager of store operations. The claimant waited until approximately April 8, 2006 to call. By April 8, 2006, more than ten working days had past. The employer had assumed the claimant had quit work. Continued work was available had the claimant not resigned.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons the administrative law judge concludes she did.

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(20) 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:

- (20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

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). The claimant's intention to voluntarily leave work was evidenced by her actions. She stopped appearing for work. When an employee leaves work for more than ten working days for compelling personal reasons, her leaving is without good cause attributable to the employer. The claimant left work for more than ten days

for compelling personal reasons. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. 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.

The claimant has received benefits in the amount of \$827.00 since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

**DECISION:**

The representative's June 5, 2006 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. The claimant is overpaid benefits in the amount of \$827.00.

bas/cs