

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN N ARENHOLZ
Claimant

APPEAL NO. 08A-UI-04177-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/23/08 R: 03
Claimant: Respondent (2)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated April 25, 2008, reference 02, which held that no disqualification would be imposed regarding Ryan Arenholz' separation from employment. After due notice was issued, a hearing was held by telephone on May 13, 2008. Mr. Arenholz participated personally. The employer participated by Stacy Sassman, Human Resources Manager, and was represented by Jeff Oswald of Unemployment Insurance Services.

ISSUE:

At issue in this matter is whether Mr. Arenholz was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Arenholz began working for Hy-Vee, Inc. on August 16, 2002. Prior to May of 2007, he was working full time as a kitchen clerk and earning \$9.00 per hour. On May 7, 2007, he became an assistant kitchen manager and was in training to become a kitchen manager. He entered into a written agreement with the employer that, upon completion of his training, he would apply for available kitchen manager positions in any area served by Hy-Vee, Inc. As an assistant kitchen manager, Mr. Arenholz was paid a salary of \$590.00 per week.

When he entered into the agreement with the employer, Mr. Arenholz understood that he might have to relocate in order to be placed in a kitchen manager's position. At the time, he believed Hy-Vee, Inc. had stores in at least Iowa, Kansas, and Missouri. The employer actually has stores in those states as well as Minnesota, Nebraska, South Dakota, Wisconsin, and Illinois. Vacancies from all locations were posted at Mr. Arenholz' store location. He would have been required to make application for and compete with others for available positions.

Mr. Arenholz was notified in February of 2008 that his training was complete as his manager felt he was capable of managing a kitchen. He applied for but was not selected for a kitchen manager's position in Waterloo, Iowa. He made application for a vacancy in Lawrence, Kansas, but withdrew his application because he did not want to move that far away from where he lived in Waverly, Iowa. While he was still employed, the employer also had openings in Knoxville, Iowa, and Newhall, Minnesota. Mr. Arenholz did not make application for either position. He did not apply for the position in Knoxville because he did not feel it was a good store.

The employer met with Mr. Arenholz on March 10, 2008 and advised him that he needed to make application for the two vacancies that were available in Knoxville, Iowa, and Newhall, Minnesota. He was told he could not continue in the training program if he did not make application for available positions as required by the written agreement. Mr. Arenholz indicated he did not intend to apply for the positions as he did not want to move far away from the area. He was told that, if he did not apply for the vacancies, the only work available would be as a kitchen clerk at \$9.00 per hour. He was also told there was a vacancy as a cook in the Chinese department at the Hy-Vee in Waverly. He declined the cook's position because he did not feel he would be able to cook Chinese food. He declined to return to working as a clerk. Because he did not accept available work or apply for available vacancies, he became separated from the employment on March 12, 2008.

Mr. Arenholz filed a claim for job insurance benefits effective March 23, 2008. He has received a total of \$2,520.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that Mr. Arenholz initiated his separation from Hy-Vee, Inc. when he declined all work the employer had available, or potentially available, for him. He could have continued in the training program if he had complied with the terms of his written agreement with the employer. He knew when he entered into the agreement that he might have to relocate outside of Iowa once his training was completed. He chose to only apply for work in Waterloo, a location relatively close to his home in Waverly. He refused to apply for kitchen manager positions that were outside the geographic area in which he wanted to work. By refusing to comply with the terms of the agreement, Mr. Arenholz left the employer with no choice but to discontinue his participation in the training program. He could have continued in the training program as long as he was making good-faith efforts to apply for available positions.

Mr. Arenholz knew or should have known that, if he was no longer in the training program, he would have to revert to his former position as a kitchen clerk at \$9.00 per hour. Since he declined to return to his former position, his separation is considered a quit. An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Arenholz left his employment because he had been working as an assistant kitchen manager and the employer only had work for him as a kitchen clerk once he was no longer in the training period. The change in work duties constituted a change in the terms of his employment.

Although there would have been a change in the terms of Mr. Arenholz' employment, the change was initiated by him as it was due solely to his refusal to continue in the training program by applying for available positions as a kitchen manager. The employer cannot be faulted for offering him the opportunity to return to his former position as a kitchen clerk once he made it clear he did not intend to fulfill his obligation under the written agreement. It was unreasonable to expect the employer to continued to pay him the \$590.00 per week salary he

earned as an assistant kitchen manager if he was no longer in the training program and did not intend to comply with the terms for which he was paid the higher wage.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Arenholz' separation was not for good cause attributable to the employer. Accordingly, benefits are denied. Mr. Arenholz has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

DECISION:

The representative's decision dated April 25, 2008, reference 02, is hereby reversed. Mr. Arenholz quit his employment with Hy-Vee, Inc. for no good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Arenholz has been overpaid \$2,520.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css