

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA J KIRKLAND
Claimant

HY-VEE INC
Employer

APPEAL 19A-UI-07873-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/15/19
Claimant: Appellant (1)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Teresa Kirkland (claimant) appealed a representative's October 4, 2019, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 29, 2019. The claimant participated personally. The employer was represented by Trenton Kilpatrick, Hearings Representative, and participated by Zach Jones, Store Director, and Jennifer Jones, Human Resources Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 September 19, 2018, as a part-time bakery clerk in the Ottumwa, Iowa, north Hy-Vee. She signed for receipt of the employer's handbook on September 18, 2018. The handbook states, "Every department is everyone's job". Employees worked in different departments to obtain more hours, because they had knowledge of the department, or for business purposes.

On August 29, 2019, the employer announced that most of its bakery operations would be conducted out of the Fairfield, Iowa, location as of September 15, 2019. On September 3, 2019, the claimant heard of the change. The human resources manager told the claimant there would be no further work for her in the bakery department but she could have her pick of all the other departments. The claimant's hours, wages, and benefits would not change. The claimant told the human resources manager she only wanted to work in the bakery. In the bakery the claimant did very little baking. She mostly stocked product, wrapped product, cleaned racks, and helped customers.

The claimant's last day of work before the September 15, 2019, change in operations, was September 10, 2019. On September 10, 2019, the claimant spoke with the human resources manager again. She told the manager that she only wanted to work in the bakery. Continued work was available had the claimant not resigned.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

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 refused to perform the work provided and quit work.

A 25 percent to 35 percent reduction in working hours is, as a matter of law, a substantial change in the contract of hire. A substantial pay reduction creates good cause attributable to

the employer for a resignation. *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). The claimant quit work because the employer changed her department. Her hours, pay and benefits would have remained the same. The change was not a substantial change in her contract for hire.

When an employee quits work rather than perform the assigned work, her leaving is without good cause attributable to the employer. The claimant left work rather than perform the job assigned by the employer. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's October 4, 2019, decision (reference 01) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn