

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTY L DUDLEY
Claimant

HY-VEE INC
Employer

APPEAL 19A-UI-03848-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/14/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 8, 2019, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit when she failed to come to work for three consecutive shifts and failed to call in and report that she would be absent. The parties were properly notified of the hearing. A telephonic hearing was held on June 7, 2019. The claimant, Kristy L. Dudley, participated. The employer, Hy-Vee, Inc., participated through Esthefany Martinez, HR Manager; and Keith Mokler of Corporate Cost Control, Inc., represented the employer. Claimant's Exhibit A and Employer's Exhibits E1 through E30 was received and admitted into the record over objection.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a production worker, from May 17, 2018, until March 11, 2019, when she was discharged from employment.

On February 26, 2019, claimant had a meeting with Martinez and Bill Kelley about returning to work from a leave of absence. Claimant wanted to return to a part-time position on third shift. She expressed that she was only interested in working two or three days per week. Martinez and Kelley told claimant that they would reach out to the third-shift supervisor to determine claimant's start date, and then they would contact claimant by telephone. Claimant provided Martinez with her new telephone number so the employer could reach her.

On February 27, 2019, HR Assistant Ashley Hamby began attempting to reach claimant to provide her with her new schedule. Hamby tried to call claimant, but claimant did not answer the telephone. Hamby sent Martinez, Kelly, and others an email to document this. (Exhibit E2) Claimant explained that she only answers calls from numbers she knows, and she did not have voicemail set up at the time so the employer could not leave her a message.

On March 1, 2019, Martinez asked Hamby whether claimant had ever called back, and Hamby replied that she had not. (Exhibits E1 and E2) Martinez attempted to call claimant that day, but she did not reach her. (Exhibit A) Claimant attempted to call Martinez back that day, but Martinez did not answer the telephone. Claimant did not leave a message. She explained that she refuses to leave messages for the employer about her personal business.

Hamby attempted to contact claimant several additional times, but she never successfully reached her. Ultimately, the employer separated claimant via letter on March 11, 2019. This letter explains that because claimant had not contacted the employer since February 26, “[the employer] will assume you have quit your job.” (Exhibit E4) The employer sent this letter via certified mail. Claimant never signed for the letter and the postal service never delivered it to her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged by the employer for disqualifying misconduct. Benefits are withheld.

Iowa Code §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.

Iowa Code section 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.22(2)j(1) and (2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required

to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

In this case, claimant ended her employment voluntarily by failing to return from a leave of absence. Claimant met with the employer on February 26 and was set to return to work. However, claimant did not take reasonable steps to ensure that she actually returned. Claimant refused to leave the employer a voicemail message to inquire about her schedule. Additionally, she declined every call from Hamby because she did not know Hamby's number. She made no efforts to stop in and visit with Martinez, and she never contacted the front desk between the time she met with the employer and the time the employer determined she had quit. Claimant's decision to not make reasonable efforts to contact the employer and not return from her leave of absence ended her employment. The administrative law judge finds claimant's separation was without good cause attributable to the employer. Benefits are withheld.

DECISION:

The May 8, 2019, (reference 02) unemployment insurance decision is affirmed. Claimant separated from employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/rvs