

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

HOANG NGUYEN
Claimant

APPEAL NO. 22A-UI-17157-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 08/14/22
Claimant: Appellant (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On September 14, 2022, Hoang Nguyen (claimant) filed a timely appeal from the September 9, 2022 (reference 02) decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on August 14, 2022 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 12, 2022. Claimant participated. Frankie Patterson of Corporate Cost Control represented the employer and presented testimony through Samantha Nysten and Jonathan Franzen. Exhibits A, the online appeal, was received into evidence.

ISSUE:

Whether the claimant voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Hoang Nguyen (claimant) was employed by Hy-Vee, Inc. as a Certified Pharmacy Technician at the employer's Pharmacy Fulfillment Center in Des Moines from December 2019 until August 20, 2022, when the claimant voluntarily quit. The employment was initially part-time. In March 2020, the employment became full-time. In December 2021, the claimant requested to return to part-time employment. The claimant thereafter worked one day a week, Sunday, from 11:00 a.m. to 5:00 p.m. Jared Crumley, Assistant Director of the Pharmacy Fulfillment Center, was the claimant's supervisor. The claimant usually worked in the vicinity of coworkers when he performed his duties. The claimant last performed work for the employer on August 14, 2022.

The employer has a harassment policy that the employer reviewed with the claimant at the time of hire. The harassment policy prohibits harassment based on various protected group statuses.

On August 20, 2022, the claimant sent a resignation email to Samantha Nylen, Human Resources Manager. The claimant wrote:

I am concerned about my position due to an uncontrollable work environment. I am referring to issues of workplace harassment I have brought to management's attention. Even as a part-time employee, certain coworkers repeatedly voice their rude, offensive comments towards me. It's demeaning and causes so much stress. I feel I have no other choice than to leave. I have filed for unemployment. Hopefully, Hy-Vee will not protest it based on the fact that I have been a prompt, high-producing and accurate pharmacy technician.

Though the claimant belatedly alleges he was the victim of harassment alleged to have occurred on August 14, 2022, the weight of the evidence indicates no such incident occurred. The claimant did not mention any such incident in his August 20, 2022 resignation email. Nor did the claimant at any other time or in any manner bring to employer's attention an alleged August 14, 2022 harassment incident. The claimant did not mention an alleged August 14, 2022 incident of harassment at the time of the September 8, 2022 fact-finding interview, even though the Iowa Workforce Development deputy would have inquired about a final, triggering incident as part of that proceeding. When the administrative law judge initially asked whether there was a final incident that triggered the claimant's decision to quit the employment, the claimant did not mention an alleged August 14, 2022 incident. Instead, the claimant spoke of concerns he shared with the employer in 2021. Only when the administrative law judge pressed for information regarding any incident more recent than 2021 did the claimant allege an incident on his last day worked, August 14, 2022. A reasonable person would conclude there was no incident of harassment on August 14, 2022 and that the claimant manufactured such an incident during the appeal hearing.

The claimant is unable to speak to any specific incident of alleged harassment alleged to have occurred at any earlier point in 2022. Between October 2021, at which time the employer addressed the claimant's allegations of harassment, and the August 20, 2022 resignation email, the claimant made no mention to the employer of any incidents of harassment.

In 2021, the claimant made various unsubstantiated and non-credible allegations of harassment allegedly perpetrated by a dozen or more coworkers. In July 2021, the claimant alleged various incidents of harassment during the preceding 18 months of months of employment and implicated 10 different coworkers in the allegations. The claimant provided no dates for the incidents. The employer advised the claimant the employer was unable to conduct an appropriate investigation, given the expanse of time to which the claimant assigned the allegations.

Later in 2021, the claimant alleged two additional incidents of harassment that turned out to be non-credible allegations. The claimant named two alleged perpetrators and provided date, time and place for the alleged harassment. The employer reviewed surveillance video regarding both allegations and determined neither occurred as the claimant described in his complaint. In one instance the alleged perpetrator was on the opposite side of the workplace at the time, the claimant alleged a close quarters harassing utterance. In the other instance, the claimant alleged a coworker intimidated him with her vehicle, but the surveillance record reflected the coworker was merely parking her car and the claimant was never in harm's way.

REASONING AND CONCLUSIONS OF LAW:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

On the other hand, voluntary quits due to inability to work with others or dissatisfaction with the work environment are presumed to be without good cause attributable to the employer. See Iowa Admin. Code r. 871-24.25(6) and (21).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The evidence in the record establishes an August 20, 2022 voluntary quit without good cause attributable to the employer. Based on the evidence in the record, the administrative law judge reaches the same conclusion the employer must have reached during the employment: that the claimant's perception is fundamentally flawed, defies reason and common sense, and is fundamentally unreliable. The claimant presents as excessively fragile, manipulative and predisposed fabrication. The weight of the evidence indicates the claimant's various allegations of harassment were not based in fact, but arose instead from an apparent ongoing mental health issue. If the evidence had indicated actual incidents of harassment, the administrative law judge would give that evidence appropriate weight, but there are no bona fide incidents of harassment here. The claimant voluntarily quit due to inability to work with others and due to dissatisfaction with the work environment. The claimant is disqualified for benefits until he has

worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The September 9, 2022 (reference 02) decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

October 19, 2022
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.