

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JOHN P MILLER**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 15A-UI-10077-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/15**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 26, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination the claimant quit work without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on September 22, 2015. Claimant John Miller participated on his own behalf. His parents, Debra and Robert Miller, also participated on his behalf. Employer Hy-Vee, Inc. was represented by Dane Swenson of Corporate Cost Control, Inc. and participated through Produce Manager Brian Mueller and Store Director Jim Simmons. Claimant's Exhibit A was received. Employer's Exhibit 1 was received.

**ISSUES:**

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a produce clerk beginning January 20, 2001, and his last day worked at the Muscatine location was April 20, 2015. On April 22, 2015, the claimant was taken to the hospital and spent a week in intensive care. His parents notified the employer that the claimant would not be reporting to work. The claimant was placed on an extended leave of absence and he and his parents were in contact with Benefits Coordinator Grant Pearson who works at the employer's corporate office. The claimant's leave was extended multiple times and his last expected return to work date was July 28, 2015. By the end of his leave, Store Director Jim Simmons completed a form terminating the claimant's employment as the store had not heard from the claimant; however, he did not submit the termination form to the employer's corporate office at that time as he was waiting to see if the claimant would contact him.

Meanwhile, on July 3, 2015, the claimant entered into a rehab treatment facility. He was released back to work by his doctors on July 30, 2015. The claimant notified Pearson he was

able to return to work at least part time; however, he was unable to return to the Muscatine location as his counselors did not want him returning to his previous environment. The claimant and his parents told Pearson they wanted him moved to a store in Marshalltown. The claimant never contacted the Muscatine location and Pearson was unable to secure the claimant employment at another store. On August 20, 2015, Simmons submitted the claimant's termination form to the employer's corporate office.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

In this case, the claimant chose to leave his employment, albeit for legitimate reasons. He did not report to the employer before the expiration of his extended leave which indicated his intent to sever the employment relationship. When he did provide information to the employer, he made the choice that he would no longer be able to return to his place of previous employment. As a preliminary matter, the claimant voluntarily quit his employment.

Iowa Code § 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. 871-24.25(2) 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 § 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 § 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:

- (2) The claimant moved to a different locality.

Iowa Admin. Code r. 871-24.25(35) 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 § 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 § 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The claimant has not fully recovered as he is unable to return to work at the Muscatine store. The employer is not obligated to accommodate a non-work-related medical condition. In the alternative, even if the claimant is considered to have been fully recovered and released back to work, he had a change in locality as he now lives in Marshalltown which is over two hours away from the Muscatine store. While the claimant's decision to leave his employment was based upon good personal reasons, it was not for good-cause reasons attributable to the employer according to Iowa law. Benefits must be denied.

**DECISION:**

The August 26, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without 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 benefit amount, provided he is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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