

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOLLY L JENKINS

Claimant

APPEAL NO. 07A-UI-09786-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC

Employer

**OC: 10/15/07 R: 04
Claimant: Respondent (2)**

Section 96.5-1 - Voluntary Quit

Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's October 18, 2007 decision (reference 02) that concluded Dolly Jenkins (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 6, 2007. The claimant participated personally. The employer was represented by David Williams, Assistant Manager of Appellate Services, and participated by Jody Bauer, Assistant Director, and Trish McElderry, Risk Management Specialist. The employer offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant voluntarily quit work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on July 18, 2002, as a part-time customer service clerk and checker.

The claimant suffered a work-related injury on May 24, 2004, and received workers' compensation payments. On or about October 1, 2007, the claimant and her attorney signed a settlement agreement. Due to the claimant's separation from employment on September 12, 2007, the claimant received payment in undefined workers' compensation benefits. The claimant agreed to resign from employment. Continued work was available had the claimant not signed the settlement agreement and resigned.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, 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:

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.

871 IAC 24.25(37) 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

In Edward v. Sentinal Management Company, 611 NW2d 366 (Minn. App. 2000) the Minnesota Court of Appeals concluded that claimant who resigned as a part of a workers' comp settlement package left employment voluntarily without good cause attributable to the employer because he had the option of remaining as an employee while pursuing his workers' compensation claim. The claimant's intention to voluntarily leave work was evidenced by her words and actions. She told the employer that she was leaving and quit work. 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). When an employee gives notice of an intent to quit and the employer accepts the employee's resignation, her leaving is without good cause attributable to the employer. The claimant told the employer she was quitting by signing the settlement agreement. The employer accepted the claimant's resignation. Her leaving was without good cause attributable to the employer. The claimant voluntarily quit without good cause attributable to the employer. Benefits are denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be

credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received benefits since filing her claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's October 18, 2007 decision (reference 02) is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are denied. The claimant is overpaid benefits in the amount of \$740.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw