

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MOUSA MOUSA-MAKKY**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 21A-UI-13060-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.26(4) – Intolerable working conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 25, 2021, (reference 02) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on August 5, 2021. Claimant participated and testified. The employer participated through Hearing Representative Barbara Buss and Store Manager BJ Bissi. No exhibits were received into the record. The administrative law judge took official notice of the agency records.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or 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:

The claimant was employed part-time as a frozen stocker for the employer, Hy-Vee Inc, from March 9, 2013, until he was separated from employment on April 19, 2020, when he quit. The claimant's immediate supervisor was Frozen Manager Darrel Landenberg. The claimant was hired at an hourly rate of \$7.50 per hour. Over the term of his employment, the claimant has accepted promotions which placed him at \$11.50 per hour. The claimant has never been guaranteed a number of hours per week.

The claimant is 26 years old. The claimant testified he has no underlying health conditions which make him more susceptible to injury and death. However, the claimant testifies he weighs 270 pounds. The claimant lives with his mother, who is 52 years old. The claimant's mother also has no known health concerns that would place her at higher risk of injury or mortality risk from Covid19.

After the onset of the Covid19 pandemic, the employer has implemented various practices to stop the spread of Covid19 among its customers and staff in the store. It issued masks to all of

its employees. It also alerted customers that if they were going to shop in the store, then they would have to wear a mask. It also placed stickers on the floors to maintain social distancing in the aisles and at the cashier stand. Each cashier stand belt was to be sanitized after every use. The employer also implemented special cleaning procedures to areas of the store that encountered high traffic such as door handles in the frozen and dairy departments. The employer also installed plastic barriers at the point of sale for each cash register.

The employer also allows employees the ability to go inactive for up to a year, if they choose to do so. This effectively operates as a year-long unpaid leave of absence.

In February 2020, the claimant's hours fluctuated down to the range of 23 or 24 hours per week from 28 hours per week. Despite noticing this fluctuation and being unsatisfied with it, the claimant did not ask anyone in the store about receiving more hours.

On April 19, 2020, the claimant told Assistant Manager Alex Harper and Assistant Manager Bill Burch that he was resigning effective immediately. The claimant told them that he was quitting because he did not want to work in the store during the Covid19 pandemic.

During the hearing and in his appeal letter, the claimant stated he was being paid too little to endure the unwashed masses that huddle into a grocery store on an everyday basis.

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

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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.

Iowa Admin. Code r. 871-24.25 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.26(4) 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:

- (2) The claimant left due to unsafe working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

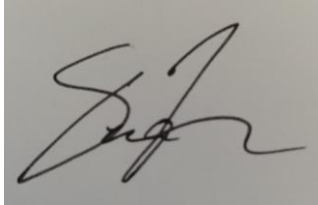
The claimant clearly quit when he submitted his resignation. Although the claimant appears to be contending his working conditions were intolerable, he has failed to make that showing. The employer implemented many practices to prevent the spread of Covid19. The claimant is also younger and has no known health conditions that place him at risk for injury or death. In this context, no reasonable person would find the claimant's working conditions during Covid19 as intolerable. This is especially the case given that the claimant could have requested to be made inactive until he could obtain a vaccine. Far more needs to be provided to prove his working conditions were objectively intolerable.

The claimant also gave reasons for his resignation that are clearly disqualifying. For instance, the claimant stated he was not paid enough to work at the employer, but he acknowledged he knew what his pay was when he was hired and accepted every subsequent position. This is a generally disqualifying reason under Iowa Admin. Code r. 871-24.25 (13). The claimant also said he was sick of dealing with customers and other facets that are part and parcel to working in a grocery store. This is generally disqualifying under Iowa Admin. Code r. 871-24.25 (21).

The administrative law judge wants to be clear. The claimant can choose to find a job that is more challenging than working at a grocery store, if he believes the work and pay is beneath him. However, this choice does not entitle him to receive unemployment benefits. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

**DECISION:**

The May 25, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant voluntarily left his 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.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

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Sean M. Nelson  
Administrative Law Judge  
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Fax (515) 725-9067

August 11, 2021  
Decision Dated and Mailed

smn/mh