

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ADAM E SUTHERLAND  
2011 W 1<sup>ST</sup> ST  
ANKENY IA 50021

HY-VEE INC  
c/o TALX UC EXPRESS  
P O BOX 283  
ST LOUIS MO 63166-0283

DAVID WILLIAMS  
TALX UC EXPRESS  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 05A-UI-06298-CT  
OC: 05/22/05 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(1) – Voluntary Quit  
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated June 10, 2005, reference 01, which held that no disqualification would be imposed regarding Adam Sutherland's separation from employment. After due notice was issued, a hearing was held by telephone on July 5, 2005. The employer participated by Denny Bisgard, Assistant Vice President for Warehousing, and Sheila Laing, Assistant Vice President for Human Resources and Distribution. The employer was represented by David Williams of TALX UC eXpress. Mr. Sutherland did not respond to the notice of hearing.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Sutherland began working for Hy-Vee, Inc. on September 18, 2002. He was employed full time as an order selector in the warehouse. He last performed services on May 5, 2005. He was then absent without calling in on May 6, 8, and 9. When the employer had not heard from him by May 11, a letter was sent advising that he was presumed to have quit because he had not been at work and had not notified the employer of his intentions.

Mr. Sutherland called on May 17 and left a message for Denny Bisgard indicating that he had not quit. He further indicated that he had not been to see a doctor. The employer left messages for Mr. Sutherland on May 18 and 19 but, he did not return the calls. As of the date of the hearing herein, the employer had not heard from Mr. Sutherland since the call of May 17. Continued work would have been available for him if he had continued reporting or had notified the employer of his situation. Mr. Sutherland knew how to request a medical leave of absence if one was necessary as he had used such leave in the past.

Mr. Sutherland has been paid a total of \$310.00 in job insurance benefits since filing his claim effective May 22, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Sutherland was separated from employment for any disqualifying reason. The administrative law judge concludes that he abandoned his job. He was absent for several consecutive shifts without notice and was, therefore, sent a letter advising that the employer presumed him to have quit. Although he called to say he had not quit, he made no further effort to return to employment or to notify the employer of his intentions. He did not request a leave of absence to preserve his employment. For the above reasons, the administrative law judge concludes that the separation should be considered a voluntary quit.

An individual who voluntarily quits employment is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). The evidence of record does not establish any reason attributable to the employer for Mr. Sutherland's separation. Accordingly, benefits are denied. Mr. Sutherland has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7).

#### DECISION:

The representative's decision dated June 10, 2005, reference 01, is hereby reversed. Mr. Sutherland voluntarily quit his employment with Hy-Vee, Inc. for no 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 job insurance benefit amount, provided he satisfies all other conditions of eligibility. Mr. Sutherland has been overpaid \$310.00 in job insurance benefits.

cfc/pjs