

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUCYND A J RODRIGUEZ**

Claimant

**APPEAL NO: 11A-UI-04143-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**

Employer

**OC: 01/09/11**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Lucynda J. Rodriguez (claimant) appealed a representative's March 30, 2011 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2011. The claimant participated in the hearing. John Fiorelli of Corporate Cost Control appeared on the employer's behalf and presented testimony from two witnesses, Virginia Dietrich and Nick Horstmann. During the hearing, Employer's Exhibits One, Two, and Three and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on June 26, 2010. She worked part time (approximately 37 hours per week) as a kitchen clerk at the employer's Clinton, Iowa store. Her last day of work was January 1, 2011. On that date she was scheduled to work 5:30 a.m. to 1:30 p.m.; however, she was allowed to leave early at 11:16 a.m. because the kitchen was not busy.

The claimant had been scheduled to work on the salad case on January 2, and had been scheduled to work until close on January 4 and January 6. On January 1 she advised her manager, Mr. Horstmann, that she would be unable to work those shifts because she had been having problems with her back and hands and the work involved with those work assignments would be too difficult for her, although she thought she could do lighter work. Mr. Horstmann indicated to her that he would get her shifts covered beginning January 2. He then sent the claimant to speak with the human resources manager, Ms. Dietrich.

When Ms. Dietrich spoke to the claimant on January 1 the claimant repeated her concerns regarding her ability to do the work assigned due to her back and hand problems. The claimant was instructed that she should go to her doctor and bring back a doctor's note with any work restrictions before she next worked. The claimant never presented any medical documentation.

On January 3 Mr. Horstmann posted a revised work schedule for the week of January 10 on which he scheduled the claimant for lighter duty work on January 14, January 15, and January 16. The claimant was a no-call, no-show for those shifts. The employer attempted to contact the claimant on those days but was unable to reach her. The employer then stopped scheduling the claimant. Several weeks after January 16 the claimant came into the store seeking the employer's signature on public assistance paperwork. She indicated at that time that she felt she had been discharged; the employer indicated that she had not been discharged, but that the employer was still awaiting medical documentation from her.

The claimant felt she had been discharged because after her conversation with Mr. Horstmann on January 1 he had taken her completely off the schedule for the week of January 3, indicating on the schedule that she had "requested off," and had told her she could get her copy of her W-2 tax form on-line. Mr. Horstmann had told all of the employees on that date that they could get their W-2s on-line. When she was then sent to the human resources office, she did not voice a belief that she had been discharged; rather, she was told that the employer still needed a doctor's note. The employer asked her whether she was in fact able to do the work, and that she should go home and think about it.

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

A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The claimant asserts that her separation was not "voluntary" as she had not desired to end the employment; she argues that it was the employer's action in taking her off the schedule and telling her she could get her W-2 tax form on-line which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where an employee believes she has been discharged but has not been clearly told she was in fact discharged. 871 IAC 24.25.

The claimant stopped reporting for work because she erroneously believed that she had been discharged. The claimant's belief that she had been discharged was not reasonable, as given that the claimant had indicated she could not do the work assigned that week, her removal from

the schedule that week was the logical result; the employer was not obligated to reassign the claimant to lighter duty work without a doctor's note on that same schedule. Further, the schedule simply noted that the claimant had "requested off," suggesting that she might be back on later schedules. Also, even after knowing that she had been "removed" from the schedule and being told about being able to retrieve the W-2 on-line, the claimant had a clear opportunity to clarify her status with the employer's human resources manager, but did not. The conversation with the human resources office was clearly in the context that the employer needed the claimant to get back with the employer with further information, not that she was discharged. Therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2.

Where a claimant has effectively quit for a medical issue, in order to become eligible for unemployment insurance benefits she must first show by competent medical evidence that she was compelled to leave employment upon the advice of her physician. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b. Then if the evidence does not establish that the medical or health issue was caused or aggravated by the work environment, she must fully recover and seek to return to work without restriction, with no work being then made available for her. Alternatively, if the evidence does establish that the medical or health issue was caused or aggravated by the work environment, she must before quitting provide the employer with sufficient information as to her work restrictions so as to allow the employer an opportunity to accommodate those restrictions. The claimant has not provided evidence that her doctor advised her to quit her position or that her medical or health issues were caused or aggravated by her work. The claimant has not satisfied her burden. Benefits are denied.

**DECISION:**

The representative's March 30, 2011 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of January 1, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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