

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID M HENSON
Claimant

HY-VEE INC
Employer

APPEAL 17A-UI-00976-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/25/16
Claimant: Appellant (1)

Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury
Iowa Admin. Code r. 871-24.25(35) – Separation Due to Illness or Injury
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 18, 2017, (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2017. Claimant participated. Employer participated through human resource manager Valorie Star and assistant manager store operations Scott Blum and Sabrina Bentler of Corporate Cost Control represented the employer.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the 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: Claimant was employed as a part-time cashier through December 16, 2016. He has diabetes and chronic depression. He, store operations manager Todd Axland and Star agreed in January 2016, that claimant would communicate when he needed a break because of his medical conditions. That worked well until December 16, 2016, when the store was very busy with an impending snow storm, claimant asked assistant manager Alex for a break and he said claimant would have a break in a bit. Then an hour later when claimant asked again, Alex promised a break soon. Claimant did not approach another manager for a break. Then with 40 minutes left in the shift, claimant's replacement arrived. When offered a break he declined and worked until the shift ended. Then he confronted Star. After argument that became verbally aggressive, Star told claimant to leave her office. On Saturday, December 17 claimant spoke to Blum about the issue and asked if he still had a job. Blum referred him to Star since he was not there at the time. Claimant said he was not comfortable meeting with Star alone and wanted someone else with him. Claimant asked if he worked the next day and Blum said he did not know but would call him. Blum became busy and did not call claimant. Blum was off work on Sunday, December 18 and spoke to Star on Monday, December 19. Blum did not try to call claimant

after realizing he had forgotten to call him back. On December 20 claimant called the store asking for Blum who was not at work so assistant manager Jordan transferred the call to Star. Claimant asked her if he was still employed. Star asked claimant twice to come to the store and speak with her and another manager. Claimant argued and she told him twice she would not discuss the matter further over the phone. She told him he could report the same day to discuss the matter and claimant hung up on her. He did not attempt to contact another manager or corporate human resources. A week later after there had been no further communication attempt from the claimant and the employer received the notice of unemployment insurance claim, Star removed him from active employment. Had he reported, continued work was available.

REASONING AND CONCLUSIONS OF LAW:

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

Subsection d further provides:

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 provides, in pertinent part:

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:

(22) The claimant left because of a personality conflict with the supervisor.

(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.

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule

871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005). "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).

Claimant's failure to communicate with the employer after Star's multiple requests to meet in person with another manager is indicative of an intention to quit. With respect to the medical accommodation issue, claimant has not established that the medical condition was work related or that treating medical personnel advised him to quit the job, as is his burden. Nor did he meet with the employer as requested before quitting to resolve his concern about the accommodation timing issue. Accordingly, the separation is without good cause attributable to the employer. Claimant is not monetarily eligible for a part-time quit resolution pursuant to Iowa Admin. Code r. 871-24.27.

DECISION:

The January 18, 2017, (reference 01) unemployment insurance decision is affirmed. 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs