

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

REBECCA M LYONS
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-05634-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 9, 2020, Rebecca M. Lyons (claimant) filed an appeal from the June 8, 2020, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Hy-Vee, Inc. (employer) by failing to report for work on three consecutive days or notify the employer of her absence. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2020. The claimant and Vicky Lyons, her mother, participated. The employer participated through Caleb Cork, Director of HR, and was represented by Marlene Sartin. The Claimant's Exhibit A and the Employer's Exhibits 1 through 4 were admitted into the record.

ISSUE:

Did the claimant voluntarily quit employment with 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 full-time as a production worker beginning on January 31, 2020, and her last day worked was March 9. Prior to that day, the claimant had requested a leave of absence. The employer asked her doctor to fill out the federal Family Medical Leave Act (FMLA) paperwork found on the government website. The employer uses this documentation to obtain the necessary information to determine if an employee qualifies for any type of medical leave not just leave under the FMLA. The claimant and her doctor felt this was fraud, as she had not worked for the employer long enough to qualify for leave under the FMLA. The claimant did not return the requested paperwork.

On March 9, the claimant reported to work feeling ill, and she notified her supervisor. He told her that if she left that day, she would go over on points, unless her absence was excused under a leave request or by a doctor. The claimant left during her first break without informing her supervisor she was leaving. She was scheduled to work the next three days, but did not report to work or notify the employer of her absence. On March 12, the employer determined she had abandoned her job per its no-call/no-show policy.

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. Benefits are denied.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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, in relevant 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:

...

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

...

(27) The claimant left rather than perform the assigned work as instructed.

...

(33) The claimant left because such claimant felt that the job performance was not to the satisfaction of the employer; provided, the employer had not requested the claimant to leave and continued work was available.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and, the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

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).

The claimant's decision to leave employment without notice or reason, and the failure to return to work renders the separation job abandonment without good cause attributable to the employer. An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. As the claimant failed to report for work or notify the employer for three consecutive workdays in violation of the employer policy, the claimant is considered to have voluntarily left employment without good cause attributable to the employer. Regular benefits are denied.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 8, 2020, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, they may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that, in general, provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount in FPUC. This decision does not address whether the claimant is eligible for PUA. For a decision on such eligibility, the claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" on the last page of the decision.



Stephanie R. Callahan
Administrative Law Judge

July 21, 2020
Decision Dated and Mailed

src/sam

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision, you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.