

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEIDI J ROGGMAN**  
Claimant

**APPEAL NO: 10A-UI-06255-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 03/14/10**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Heidi J. Roggeman (claimant) appealed a representative's April 16, 2010 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 convened on June 9, 2010; it was reconvened and concluded on June 17, 2010. The claimant participated in the hearing. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from three other witnesses, Tracy Kading, Al Bock, and Gary Howe. One other witness, Lieh Anne Abrahamson, was available on behalf of the employer but did not testify. 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 March 20, 2008. She worked part time (approximately 25 hours per week) as a meat department clerk. Her last day of work was March 6.

On March 5 the claimant was working a shift from 12:00 p.m. to 7:00 p.m. She clocked out and left at 3:19 p.m. She did not speak to any manager before leaving. Coworkers who saw her leaving believed she was quitting. She left because of frustrations with a coworker, Mr. Howe, meat specialist. There were two incidents between about 2:30 p.m. and the time she left work. In the first, the claimant had started to assist a customer in slicing some ham, but then walked away from the customer, believing someone else would come and wrap the ham. Mr. Howe then came over and asked the customer if she needed help, and was told the claimant had been assisting the customer but had then gone away, so he finished assisting the customer.

When he queried the claimant about this, she responded that she did not think she was allowed to wrap the ham, to which he made a dismissive response.

A few minutes later a customer came with a certificate for a turkey. The claimant went to the freezer, but did not see any easily accessible turkeys. She came back out and began to indicate that she was not able to access any of the turkeys. Mr. Howe went to the freezer and immediately found and brought out a turkey, which he gave to the customer. The claimant felt that Mr. Howe was behaving in a derogatory manner towards her. She therefore decided she could not continue working at that time, and left. Although a coworker had advised her as she left that she should speak to a manager before leaving, she did not.

The claimant had been scheduled for a shift from 9:00 a.m. to 6:00 p.m. on March 6. When the manager in charge of that area on March 5 learned that the claimant had left without speaking to any manager in the middle of her shift and appeared to have quit, he informed the store director, Mr. Kading, and the claimant was replaced on the schedule for March 6. However, the claimant did come into work that day. When Mr. Kading learned that the claimant had come in on March 6, he met with her. When he told her that the employer had believed that she had quit on March 5, she responded that she had only “quit Gary (Howe).” When Mr. Kading further attempted to learn what had happened on March 5, the claimant would only respond that it “didn’t matter,” and that “you don’t care.” Mr. Kading then sent the claimant home at about 10:00 a.m., indicating he would get back with her as to whether she would be allowed to return. After he made further inquiry into the matter, Mr. Kading contacted the claimant by phone on March 12 and advised her that he could not allow her to return.

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

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 sections 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 decision not to allow her to return to work 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 section 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 a voluntary quit of the employment, such as leaving rather than performing assigned work.

871 IAC 24.25(27) 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:

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

The claimant did leave without permission or notice to a manager, rather than staying and performing her assigned work; 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 section 96.6-2.

Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). Leaving because of a dissatisfaction with the work environment or a personality conflict with a coworker is not good cause. 871 IAC 24.25(21), (6). The claimant has not provided sufficient evidence to conclude that a reasonable person would find the employer's work environment detrimental or intolerable. O'Brien v. Employment Appeal Board, 494 N.W.2d 660 (Iowa 1993); Uniweld Products v. Industrial Relations Commission, 277 So.2d 827 (FL App. 1973). The claimant has not satisfied her burden. Benefits are denied.

In the alternative, even if the separation is characterized as a discharge, the result would be the same. The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was her departure in the middle of her shift without notice to or permission from a manager. The claimant's behavior on March 5 shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Treated as a discharge, the employer effectively discharged the claimant for reasons amounting to work-connected misconduct.

**DECISION:**

The representative's April 16, 2010 decision (reference 01) is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. As of March 6, 2010, 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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