

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK DAMBRA
Claimant

APPEAL NO: 12A-UI-09321-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/16/11
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated July 25, 2012, reference 03, which held that Frank Dambra (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2012. The claimant provided a telephone number but was not available when that number was called for the hearing, and therefore, did not participate. The employer participated through Brandon Utz, Store Operations Manager; Amy Jordahl, Store Director; Julia Day, Employer Representative. Employer's Exhibit One was admitted 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:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time night stocker from January 27, 2012 through July 1, 2012. The employer has a written drug testing policy for which the claimant signed that he received, read and understood it. The claimant worked the night of June 29, 2012 and injured himself. Pursuant to company policy, the claimant had to be drug tested within 32 hours of a work place accident or injury.

Store Operations Manager Brandon Utz called the claimant the next morning on June 30, 2012 and directed him to report to the store for a drug test. The claimant came in and provided a urine sample for an in-house drug test. The results can be read within five minutes but the claimant left for a doctor's appointment before the results could be read. The drug test was positive for marijuana.

Manager Utz called the claimant on the following morning to inform him he was suspended for a positive drug test and to explain the subsequent procedures. The urine sample was going to be sent out to a lab for a confirmation test. If the test was negative, the employee would be reinstated with back pay but if it was positive, the employee would be discharged. Mr. Utz had only told the claimant about the positive result and his suspension when the claimant said, "Whatever" and hung up on the employer. Mr. Utz waited to hear back from the claimant but when the claimant failed to contact the employer by the following morning, his actions were considered to be a voluntary quit. Mr. Utz did not send out the urine sample to be tested but did hold it for an additional week. When the claimant again failed to contact the employer, the sample was discarded.

The claimant filed a claim for unemployment insurance benefits effective October 16, 2011 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits. He is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit on June 30, 2012 when he walked out before the drug test results could be read even though this was a matter of minutes. He carried out that intent when he hung up on the store operations manager as the procedures for a positive drug test were being explained to him over the phone. The claimant confirmed that he intended to quit by his failure to contact the employer at any time thereafter.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. He failed to participate in the hearing and has therefore failed to meet his burden. Benefits are denied accordingly.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated July 25, 2012, reference 03, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs