

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BETH A TUCKER
134 VERMONT
LACONA IA 50139

HY-VEE INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
4100 HUBBELL #78
DES MOINES IA 50317-4546

Appeal Number: 04A-UI-06051-DWT
OC: 05/09/04 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-a – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's May 25, 2004 decision (reference 01) that concluded Beth A. Tucker (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had voluntarily quit her employment for reasons that qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, telephone hearings were held on July 8 and 9, 2004. The claimant participated in the hearings. David Williams, a representative with TALX, appeared on the employer's behalf with Sheila Laing, Jeff Kent, and Fred Housmann as witnesses. 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.

ISSUES:

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer in August 1999. The claimant has been involved in a number of work-related injuries during her employment. The most recent work-related injury occurred in May 2002. In 2002, Dr. Fellows, the claimant's treating physician, advised her to quit her employment, but she did not.

In late February 2004, the claimant received permanent work restrictions. The claimant and employer talked about her work restrictions and her continued employment in early March 2004. The employer assigned the claimant jobs in the warehouse (where the claimant had always worked) that the claimant's doctor indicated did not violate her work restrictions in March and April 2004. The employer also told the claimant where job openings were posted and that she was welcome to apply for any job she believed she was capable of performing. The claimant did not apply for any jobs on her own.

As the result of an April 6 worker's compensation hearing, the employer was confused as to what jobs the claimant could and could not do. On April 8, 2004, Dr. Fellows gave the claimant an additional restriction of no repetitive motion of her upper extremities. The employer did not learn about the new restriction until April 16, 2004. The employer again looked at the jobs that needed to be done and accommodated the claimant's work restrictions. One of the jobs the employer assigned the claimant was counting totes. The claimant did not have any problems with this job.

On May 3, 2004, the employer needed totes washed and labels scraped off the totes before they could be sent to another store. Since the claimant could work at her own pace and the employer only expected her to work two hours at this assignment, the employer did not consider this job to violate any of the claimant's work restrictions. The claimant performed this job on May 3. When the claimant finished this job, she told a manager the job caused her arms to hurt and she could not wash any more totes. The manager told the claimant she could again count totes and would not have to wash totes the rest of the day or the next day. The manager, however, contacted the employer's human resource department. The employer decided the job assignment did not violate the claimant's work restrictions and since the employer needed this job done, Kent would show the claimant how to do the job in steps so her arms should not hurt.

On May 6 when the claimant reported to work, the employer showed the claimant how to break the job down into parts and how she could do the job so it would not violate her work restrictions. The employer also told the claimant that she could add wiping down the walls and equipment to break up the steps when washing totes and scraping labels off the totes. The claimant understood she had to do this job. The claimant performed this assignment on Thursday at a much slower pace. The employer allowed the claimant to work as fast or as slow as she wanted to on a job. The claimant's arms still hurt her on Thursday after she completed the job assignment.

On Friday, May 7, the claimant did not report to work because her daughter was ill. On May 7, the claimant concluded the employer would not assign her to another job and the job violated

her work restrictions. As a result of this conclusion, the claimant typed her resignation letter on May 7. The claimant resigned because she could no longer perform her job duties without experiencing pain in her shoulders. The claimant's resignation was effective as of May 11, 2004.

On May 10, 2004, the claimant's next scheduled day to work, she gave her resignation letter to Kent. When the claimant asked if she should work or go home, Kent told her this was her decision. The claimant concluded the employer would not do anything, so she went home. The claimant did not return to work. Kent left a message for the human resource department that the claimant submitted her resignation letter and walked off the job on May 10, 2004.

The claimant established a claim for unemployment insurance benefits during the week of May 9, 2005. She filed claims for the weeks ending May 15 through July 3, 2004. The claimant received her maximum weekly benefit amount of \$205.00 during each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code §96.5-1. The claimant quit her employment when she submitted her resignation letter on May 10, 2004. When a claimant quits, she has the burden to establish she quit with good cause attributable to the employer. Iowa Code §96.6-2.

The law presumes a claimant is qualified to receive benefits when she is compelled to leave employment because the employment aggravates an injury to the point it is impossible for the employer to continue employment without seriously endangering the employee's health. The claimant, however, must present competent evidence showing adequate health reasons to justify termination and, before quitting, the claimant must inform the employer she intends to quit unless the problems is corrected or the claimant is reasonably accommodated. 871 IAC 24.26(6)(b).

The claimant informed the employer on May 10 she would quit the next day unless the employer made reasonable accommodations. Although the employer received information that the claimant was quitting because of the pain she suffered while performing the jobs the employer assigned, the employer did not attempt to make any more accommodations. Instead, a manager told the claimant she could go home on May 10 instead of working until May 11. The claimant established she met the requirement of putting the employer on notice she would quit if the employer did not make reasonable accommodations. 871 IAC 24.26(6)(b).

The claimant's assertion her arms and shoulders were in pain on May 3 and 6 does not establish competent evidence to establish continued employment would seriously harm her health. Even though the claimant's doctor may have advised the claimant to quit in 2002, she did not have the same job duties in 2004 as she had in 2002. If the claimant was as in as much pain as she asserted, it is difficult to understand why she did not go to her doctor and tell him about the tote washing job the employer assigned her to do. The claimant's doctor could then determine if the job violated her work restrictions or if the pain she experienced was the result of something else. Even though the claimant's arms and shoulders hurt after she washed totes does not mean the job assignment violated her work restrictions. The evidence does not establish that continued employment would seriously harm the claimant's health.

The claimant established compelling personal reasons for quitting. The reasons she quit do not, however, qualify her to receive unemployment insurance benefits. As of May 9, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending May 15 through July 3, 2004. The claimant has been overpaid a total of \$1,640.00 in benefits.

DECISION:

The representative's May 25, 2004 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 9, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits during the weeks ending May 15 through July 3, 2004. The claimant has been overpaid \$1,640.00 in benefits she received for these weeks.

dlw/b