

**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**

**Appeal Number: 06A-UI-05931-DT
OC: 04/30/06 R: 02
Claimant: Respondent (2)**

**TERA M JAMES
APT 4
1101 E 10TH ST S
NEWTON IA 50208-4938**

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 is based.

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

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.

**TALX EMPLOYER SERVICES
3799 VILLAGE RUN DR #511
DES MOINES, IA 50317**

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's May 31, 2006 decision (reference 01) that concluded Tera M. James (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 27, 2006. The claimant participated in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Jeff Price, James Freese, and Ardith Kool. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer on September 18, 2004. She worked part time (25 – 30 hours per week) as a deli clerk/checker/stocker in the employer's Newton, Iowa store. Her last day of work was April 30, 2006. She voluntarily quit that day.

On April 30 the claimant was scheduled for a shift as a deli clerk. At approximately 3:15 p.m., Ms. Kool, another deli clerk who had been designated by Mr. Freese, the kitchen manager, as a lead worker when another manager was not on duty, was discussing closing duties with the claimant, including the need to remove dishcloths from the hot case area. The claimant began to move away, and Ms. Kool placed her hand on the claimant's arm to get her attention to show her a spot on the glass of the hot case. Ms. Kool denied applying any pressure in her physical contact to the claimant. Ms. Kool then went into the kitchen area. The claimant characterized Ms. Kool's contact as "grabbing" her arm, and felt she had been physically assaulted; she then left the store. She then called Mr. Price, the store director, and reported to him that she had quit because of a physical assault. He asked her to come in and meet with him; he believed she had agreed, but she actually did not intend to come in to meet with him, and did not come in.

The claimant's boyfriend called Mr. Freese and advised him that the claimant was quitting due to a physical assault by Ms. Kool. The claimant asserted that she had had a bruise, a hand-print-sized red mark that lasted for days, due to the contact by Ms. Kool; however, she did not meet with either Mr. Price or Mr. Freese, or any other representative of the employer, to show the mark to the employer. She did not wish to pursue the matter with the employer as she was generally tired of Ms. Kool and another coworker always criticizing and complaining about the claimant's work quality.

The claimant established a claim for unemployment insurance benefits effective April 30, 2006. The claimant has received no unemployment insurance benefits since the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for 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.

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 claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684

(Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant 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 supervisor or coworkers is not good cause. 871 IAC 24.25(6), (21), (23). Under the Iowa supreme court's analysis in Hy-Vee Inc. v. Employment Appeal Board, 710 N.W.2d 1 (Iowa 2005), a claimant does not have to specifically indicate or announce an intention to quit if his or her concerns are not addressed by the employer, however, Hy-Vee is silent as to whether the claimant must still express concerns to the employer and give the employer reasonable opportunity to address his or her concerns.

Here, the employer expressed a desire to meet with the claimant and discuss the situation. At the very least, meeting with the employer would have provided the opportunity to verify whether the physical injury had in fact occurred as asserted by the claimant. The administrative law judge finds Ms. Kool's first-hand testimony that she only lightly laid her hand on the claimant's arm more credible. The claimant has not established by a preponderance of evidence that she was in fact physically injured by Ms. Kool's contact with her.

Failing to establish that she was in fact physically assaulted by Ms. Kool, while the claimant's work situation was perhaps not ideal, she 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.

DECISION:

The representative's May 31, 2006 decision (reference 01) is reversed. The claimant voluntarily left her employment without good cause attributable to the employer. As of April 30, 2006, 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.

ld/pjs