

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLEEN MILLER
Claimant

APPEAL NO: 10A-UI-09347-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05-30-10
Claimant: Respondent (1)

Section 96.5-2-a –Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 25, 2010, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 18, 2010. The claimant participated in the hearing. Chad Bulman, Assistant Store Director; Sara Scogland, Human Resources Manager; and Daniel Speir, Employer Attorney, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant voluntarily left her 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 as a part-time wine and spirits clerk for Hy-Vee from March 12, 2009 to May 21, 2010, when she voluntarily quit. She worked without incident until April 26, 2010, when the employer instituted a new dress code for this particular store. The claimant fractured her foot in 1976 and has difficulty finding shoes that are comfortable. She finally found some white Nike tennis shoes with arch support that worked for her and she had been wearing those. The new dress code policy required employees to wear shoes that are black, brown, blue or gray in color. The shoes can be a dark solid color work or dress shoe or a black athletic shoe. The claimant purchased two new pairs of shoes; one was Nike brand and the other was New Balance. She also purchased two or three different inserts but she came home from work in tears April 28, 2010, because her feet hurt so much. She spoke to the department manager April 29, 2010, and showed him her swollen left foot. The department manager said he felt for her but she needed to figure out how to solve the problem. The claimant tried the second pair May 1, 2010, and then tried to switch back and forth but they both hurt her foot. The claimant worked seven days in a row and on May 4, 2010, she wore her comfortable shoes. She went to see the human resources manager April 4, 2010, to ask if she could be given until May 7, 2010, to special order some shoes. She was told she had to be in code or she could not be there and since she was not in code, she was told to check out and to go get the proper shoes. She even

tried to color her white shoes dark so that she would be in compliance with the dress code but that did not work. The claimant saw her physician May 5, 2010, and was told to stay off her feet for four days. She returned to work May 9, 2010, with her comfortable shoes and worked until May 21, 2010, when the assistant store director told her she could not work in white shoes. The claimant told him they already had this conversation and it was his call. The employer provided the claimant with a resignation form indicating that she quit due to non-compliance with the dress code.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant left her employment May 21, 2010, because she could not find comfortable shoes that fit within the employer's dress code. She had no problems prior to the institution of the dress code and the employer knew about the claimant's foot problems but refused to accommodate her without a doctor's restriction. A voluntary quit due to intolerable or detrimental working conditions is deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005). In the case herein, the administrative law judge concludes any reasonable person would have quit under similar circumstances as the employer effectively gave her no choice but to quit or face severe foot pain every time she worked. The claimant made the employer aware of her difficulty with footwear but the employer refused to offer any accommodations or to work with her in any manner. The claimant's actions were reasonable under the circumstances and the employer's were not. Consequently, the claimant's separation was with good cause attributable to the employer as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The June 25, 2010, reference 01, decision is affirmed. The claimant voluntarily quit her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs