

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY L LOVELADY
Claimant

APPEAL NO. 07A-UI-08531-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/05/07 R: 01
Claimant: Respondent (2)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated August 28, 2007, reference 01. The decision allowed benefits to the claimant, Danny Lovelady. After due notice was issued, a hearing was held by telephone conference call on September 25, 2007. The claimant participated on his own behalf. The employer participated by Night Stock Crew Manager Eric Daniels; Assistant Manager Gary Brown; Manager of General Merchandise Jon Johnson; and was represented by TALX in the person of David Williams.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

Danny Lovelady was employed by Hy-Vee from January 1 until July 20, 2007, as a part-time night stock crew member. He was hired part-time with no guarantee of hours, although part-time people can work as many hours as they are willing to do, depending on business needs and availability.

In mid-January 2007 the claimant's hours increased to around 40 per week. On July 6, 2007, Mr. Lovelady had asked Night Stock Crew Manager Eric Daniels about going full-time, and he said he would talk with Manager Jon Johnson. The difference between full-time and part-time workers is not the number of hours but the benefits. Full-time employees get health insurance, vacation and bonuses. Later Mr. Daniels told the claimant that it might be as much as two years before he could go full-time.

The claimant did not speak with the manager about going full time to confirm what he had been told, or to request that he be scheduled for fewer hours if he could not get the benefits. He did nothing for two more weeks and then, when he was off work due to illness, "thought about it" and decided he did not want to continue working. He notified Assistant Manager Gary Brown in person on July 20, 2007, he was quitting, turned in his badge and left.

Danny Lovelady has received unemployment benefits since filing a claim with an effective date of August 5, 2007.

REASONING AND CONCLUSIONS OF LAW:

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(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

The claimant's decision to resign was apparently the result of being told he could not immediately be moved to a full-time status. At the time of hire he was told he would be part-time with no guarantee of hours. When his hours increased shortly after he was hired there was no promise he would be given a full-time status with a guarantee of hours and benefits, and he continued to work under these conditions for six months. Rather than ask for a reduction in hours, or speak with the store manager about his employment, Mr. Lovelady resigned. The record establishes he did not have good cause attributable to the employer for quitting and he is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of August 28, 2007, reference 01, is reversed. Danny Lovelady is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible. He is overpaid in the amount of \$1,449.00.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css