

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

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HY-VEE INC
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TALX UC EXPRESS
3799 VILLAGE RUNE DR #511
DES MOINES IA 50317

Appeal Number: 05A-UI-00552-H2T
OC: 11-14-04 R: 02
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 is 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)

Iowa Code §96.5(1) – Voluntary Leaving
871 IAC 24.26(22) – Voluntary Leaving
Iowa Code §96.4-6-a – Department Approved Training
871 IAC 24.39(2) – Department Approved Training – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 5, 2005, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on February 7, 2005. The claimant did participate. The employer did participate through Marla Gentry, Human Resources Coordinator and Tim Hauptert, Store Director and was represented by David Williams of TALX UC eXpress.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a bakery wrapper part time beginning March 1, 2004 through August 24, 2004 when she voluntarily quit. The claimant quit to relocate to another vicinity to attend school. Had she not quit, continued work was available for her. The administrative record shows that the claimant has not requalified for benefits but is otherwise monetarily eligible. The claimant is currently attending school full time. She does not normally work during the school year or holiday breaks and she has been granted Department Approved Training (DAT) status.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer, but has not requalified and is otherwise monetarily eligible.

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 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The separation is disqualifying. However, the claimant has not requalified for benefits since her separation and is otherwise monetarily eligible according to base period wages. Benefits are allowed, provided the claimant is otherwise eligible.

An individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. However, benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work. The claimant has been granted Department Approved Training status.

Iowa Code section 96.4-6-a-b provides:

6. a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director, nor shall the individual be denied benefits with respect to any week in which the individual is in training with the approval of the director by reason of the application of the provision in subsection 3 of this section relating to availability for work, and an active search for work or the provision of section 96.5, subsection 3, relating to failure to apply for or a refusal to accept suitable work. However, an employer's account shall not be charged with benefits so paid.

b. An otherwise eligible individual shall not be denied benefits for a week because the individual is in training approved under 19 U.S.C. § 2296(a), as amended by section 2506 of the federal Omnibus Budget Reconciliation Act of 1981, because the individual leaves work which is not suitable employment to enter the approved training, or because of the application of subsection 3 of this section or section 96.5, subsection 3, or a federal unemployment insurance law administered by the department relating to availability for work, active search for work, or refusal to accept work.

For purposes of this paragraph, "suitable employment" means work of a substantially equal or higher skill level than an individual's past adversely affected employment, as defined in 19 U.S.C. § 2319(l), if weekly wages for the work are not less than eighty percent of the individual's average weekly wage.

871 IAC 24.40(1) provides:

Department-approved training (DAT), state tuition--procedure.

24.40(1) For those individuals who are otherwise eligible, but who are financially incapable of paying tuition and related course fees, the department may provide up to \$1,000 per individual in a 24-calendar-month period. The criteria are:

- a. Funds must be available.
- b. Approval of department-approved training must be received prior to payment to the educational institution.
- c. Individuals must certify financial need to qualify for DAT tuition and fees. An individual cannot have income of more than 125 percent of the individual's weekly unemployment insurance benefit amount. Income is defined as unemployment insurance benefits and wages.
- d. Financial assistance shall be defined as grants and scholarships for tuition and fees.
- e. Tuition and fees can be approved for the length of the course up to 24-month maximum, even if the unemployment insurance benefits subsequently exhaust or the claimant becomes ineligible.
- f. Tuition and fees cannot be approved for a person who is currently attending class.

g. Any obligation to the training institution from the department-approved training assistance fund combined with other financial aid, which is awarded to the student and can only be used for tuition and fees, may not exceed the total cost of tuition and fees at the training institution.

h. Any DAT funds which are not used by the educational institution, due to whatever the reason, shall be returned to the department within 90 days of completion of the course.

871 IAC 24.39 provides:

Department-approved training or retraining program. The intent of the department-approved training is to exempt the individual from the work search requirement for continued eligibility for benefits so individuals may pursue training that will upgrade necessary skills in order to return to the labor forces. In order to be eligible for department-approved training programs and to maintain continuing participation therein, the individual shall meet the following requirements:

(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

a. The educational establishment at which the claimant would receive training.

b. The estimated time required for such training.

c. The occupation which the training is allowing the claimant to maintain or pursue.

(2) A claimant may receive unemployment insurance while attending a training course approved by the department. While attending the approved training course, the claimant need not be available for work or actively seeking work. After completion of department-approved training the claimant must, in order to continue to be eligible for unemployment insurance, place no restriction on employability. The claimant must be able to work, available for work and be actively searching for work. In addition, the claimant may be subject to disqualification for any refusal of work without good cause after the claimant has completed the training.

(3) The claimant must show satisfactory attendance and progress in the training course and must demonstrate that such claimant has the necessary finances to complete the training to substantiate the expenditure of unemployment insurance funds.

This rule is intended to implement Iowa Code section 96.4(6).

Furthermore, the able and available requirement is waived due to claimant's DAT status pursuant to 871 IAC 24.39(2).

DECISION:

The January 5, 2005, reference 02, decision is reversed. The claimant's separation from employment with Hy-Vee Food Stores was for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged for benefits paid during claimant's eligibility for DAT.

tkh/pjs