

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADAM S SWANN
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-01883-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/18/20
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) - Overpayment

STATEMENT OF THE CASE:

The employer filed an appeal from the December 21, 2020, (reference 01) unemployment insurance decision that awarded benefits based upon claimant's separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 24, 2021. The claimant, Adam Swann, participated personally. The employer, Hy-Vee Inc., participated through Barbara Buss, hearing representative, Jessica Cashman and Colin Kamber. Employer's Exhibits 1 through 12 were received into the record.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?
Was the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a Customer Service Clerk approximately twenty (20) hours per week. He was hired on November 11, 2019 and his last day worked was July 1, 2020. His job duties included checking customers out who were buying groceries. On June 9, 2020 the employer received a harassment complaint about claimant, and the claimant was placed on leave while it was investigated. As a result, of the investigation it was decided to move the claimant to a different position to keep him and the employee who filed the harassment complaint separated. After several efforts to find a department that had an available position on June 21, 2020 claimant began working as a Courtesy Clerk. Claimant, while working as a Courtesy Clerk, was instructed by his supervisor to check out customers (essentially to fill in as a Customer Service Clerk), duties he was capable and qualified to complete. He refused. Another supervisor instructed him to check out customers again. He refused. On July 1, 2020 claimant clocked in at 3:05 pm. He was called into a meeting with management about his insubordination. At 3:20 p.m. in the middle of the discussion claimant walked out of the office without being dismissed and without his employment being terminated. He clocked out at 3:56 p.m. and left the facility.

Claimant was scheduled to work until 9 p.m. that night, as well as on July 3rd, 6th, 7th, and 8th. Claimant did not return for any additional shifts. The employer has a policy that considers three consecutive missed shifts to be job abandonment and a voluntary quit. Claimant signed the handbook containing that policy on November 18, 2019.

There was continuing work available if claimant had not voluntarily quit his employment. Claimant was not discharged and had no prior discipline.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §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.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

A claimant who confronts his employer and demands that he be discharged and is subsequently discharged actually quits his employment. Job insurance benefits "are not determinable by the course of semantic gymnastics." *Frances v. IDJS*, (Unpublished Iowa App 1986). Where an individual mistakenly believes that he is discharged and discontinues coming to work (but was never told he was discharged), the separation is a voluntary quit without good cause attributable to the employer. *LaGrange v. Iowa Department of Job Service*, (Unpublished Iowa Appeals 1984).

In this case, claimant had an intention to quit and carried out that intention by leaving before the end of his shift and failing to come to work for any further scheduled shifts. He was not on vacation and was not ill. Claimant walked out of a meeting with management without being told his employment was terminated. Claimant never returned for additional shifts. As such, claimant voluntarily quit.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In this case claimant refused to come back to work. Iowa Admin. Code r. 871-24.25(27) 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 § 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 § 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:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

Iowa Code § 96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

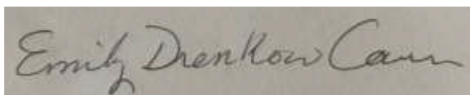
a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by 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.

b. (1) (a) 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.

Since the Claimant quit without good cause attributable to the employer, the administrative law judge concludes that the Claimant has been overpaid unemployment insurance benefits in the amount of \$2,973.00 pursuant to Iowa Code § 96.3(7).

DECISION:

The December 21, 2020 unemployment insurance decision is reversed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible. The claimant has been overpaid unemployment insurance benefits in the gross amount of \$2,973.00 to which he was not entitled and those benefits must be recovered in accordance with Iowa law.



Emily Drenkow Carr
Administrative Law Judge

March 8, 2021
Decision Dated and Mailed

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