

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HANNAH J VAN HOUTEN
Claimant

HY VEE INC
Employer

APPEAL NO. 22A-UI-00829-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/31/21
Claimant: Appellant (5)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant, Hannah Van Houten, filed a timely appeal from the November 22, 2021, reference 01, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit effective October 1, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 31, 2022. Claimant participated. Barbara Buss of Corporate Cost Control represented the employer and presented testimony through Greg Nystrom and Sarah Willoughby. Exhibit A was received into evidence.

ISSUES:

Whether the claimant was laid off, was discharged or misconduct in connection with the employment, or voluntary quit without 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, Hannah Van Houten, was employed by Hy-Vee, Inc. as a "regular time" Certified Pharmacy Technician and worked full-time hours at the Hy-Vee store in Altoona. The claimant began her employment in 2017 and last performed work for the employer on October 1, 2021. As of June 29, 2021, Sarah Willoughby, Pharm. D., was Pharmacy Manager at the Altoona store and she was the claimant's immediate supervisor. Greg Nystrom was and is the Human Resources Manager at the Altoona store.

Toward the end of the employment, the claimant notified the employer that her last day at work would be October 11, 2021, that the claimant then planned to commence a two-week approved vacation, and that the claimant then planned to remain away from the employment indefinitely at least until spring of 2022. The claimant had plans for extensive travel to and around the east coast of the United States. The employer tentatively approved the claimant's two-week vacation request in advance. However, in order for the two-week vacation to be paid, the claimant was required to work at least one shift in the new fiscal year that began October 4, 2021.

On October 1, 2021, the claimant left work early after receiving word that her grandfather had transitioned to home-based hospice care and that he was expected to pass away within three days. Before leaving her shift early, the claimant obtained permission from the store director and notified the pharmacist on duty. The claimant was next scheduled to work on Monday October 4, 2021.

On October 4, 2021, the claimant notified Greg Nystrom, Human Resources Manager that she continued to need to remain off work through October 10, 2021, due to the need to care for a family member and due to being exposed to COVID-19. The employer approved the claimant's absence without pay through for shifts through October 10, 2021. The claimant further indicated an intention to commence her two-week vacation effective October 12, 2021. The claimant also sent a text message to two staff pharmacists, including the one who made the technicians' schedule, to advise that she had been approved off through October 10, 2021. The claimant did not send notice to the pharmacy manager, but one of the other pharmacists forwarded the claimant's message to the pharmacy manager.

On October 5 or 6, 2021, Mr. Nystrom conferred with the pharmacy manager and store management and they conveyed their understanding that the claimant did not plan to return to the employment.

The claimant's grandfather passed away on October 7, 2021. The visitation and funeral service occurred on October 11, 2021. The burial occurred on October 15, 2021. In light of her grandfather's passing, the claimant decided to put her travel plans on hold. The claimant and her family members took turns staying with the claimant's grandmother during her grieving and took turns assisting the claimant's grandmother with her health issues. The claimant did not mention to the employer that her time away from work was based on her need to assist with caring for her grandmother.

On October 20, 2021, the claimant noted she had not received any vacation pay. On that day, the claimant spoke to Nystrom, who advised the claimant that because she had not worked a shift in the new fiscal year, the vacation could not be paid under the employer's policies. The claimant subsequently inquired about returning to work one shift so she could be paid for two-week vacation period. The employer declined to allow the claimant to return to work for the one day. The claimant received the definitive answer on the issue on November 1, 2021. The claimant did not inquire about returning the employer beyond the request to work just the one day.

At the time the claimant worked her last day, and subsequent to that day, the employer continued to be short-staffed with pharmacy technicians. Had the claimant not notified the employer her last day of work would be October 11, 2021, the employer would have had continued work for the claimant beyond that date.

REASONING AND CONCLUSIONS OF LAW:

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(c) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

c. The individual left employment for the necessary and sole purpose of taking care of a member of the individual's immediate family who was then injured or ill, and if after said member of the family sufficiently recovered, the individual immediately returned to and offered the individual's services to the individual's employer, provided, however, that during such period the individual did not accept any other employment.

Iowa Admin. Code r. 871-24.26(8) provides:

This separation is not considered to be a voluntary quit.

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or marriage.

Iowa Code section 96.5(1)(f) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Where a claimant left to take a vacation, the claimant is deemed presumed to have voluntarily quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25(25)

The evidence in the record establishes a voluntary quit without good cause attributable to the employer. The claimant voluntarily quit to take an extended indefinite leave from the employment. The claimant moved her effective quit date up from October 4, 2021 so that she

could be with her family during her grandfather's father's final days. The quit was not for the purpose of caring for an immediate family member within the meaning of the law. The claimant had compelling reasons to be off work during her grandfather's final days, but did not return to work when the compelling reason for being off work ended with the passing of her grandfather. The claimant could have elected to return to work at that time, but elected to remain off work for a further extended period. Only after the employer advised the claimant was ineligible for vacation pay did the claimant explore returning to the employment, but even then the claimant was interested in returning for only one day to become eligible for vacation pay and was not interested in returning to the employment under the conditions that had existed up to the time she elected to go off work. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The November 22, 2021, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective October 4, 2021. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



James E. Timberland
Administrative Law Judge

February 18, 2022
Decision Dated and Mailed

jet/kmj