

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARLETTA M SMITH
Claimant

APPEAL NO. 07A-UI-05318-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/08/07 R: 03
Claimant: Respondent (2)

Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated May 16, 2007, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on June 8, 2007. The claimant participated. The employer participated by David Williams, Hearing Representative, and witnesses Chris Stoos and Deb Dowd.

ISSUE:

At issue in this matter is whether Ms. Smith voluntarily quit work while employed at the same hours and wages and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony and considered all of the evidence in the record, the administrative law judge finds: The claimant worked for this employer from October 20, 2004 until February 11, 2007 as a part-time bus person/dish room worker. The claimant was paid by the hour. Her immediate supervisor was Deb Dowd. Ms. Smith voluntarily quit work by failing to report for scheduled work on three consecutive scheduled days without providing any notice to the employer of her impending absences. In early February 2007, Ms. Smith specifically requested that her part-time working hours be reduced to one day per week as she had accepted other employment which conflicted with her regular part-time work at Hy-Vee Food Store. It was agreed that the claimant would work Sundays and the claimant was so scheduled. Although the claimant was scheduled for three consecutive Sundays by the employer on a posted schedule in the work area, Ms. Smith did not personally view the schedule and did not report for scheduled work. The claimant did not inform her supervisor or management of Hy-Vee Food Store that she would not be reporting. When informed by an hourly employee that the employee did not see the claimant's name on the schedule, Ms. Smith did not personally contact her supervisor or any management personnel to determine her status. The claimant was scheduled to work but did not report. After the claimant failed to report for scheduled work

for three consecutive work Sundays and did not provide notification, her name was removed from the company employment roll.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant failed to report for scheduled work and did not provide notification to her employer on three consecutive scheduled work days. Thus, the employer reasonably concluded that the employee had voluntarily quit her employment by failing to report. In this case the evidence establishes that Ms. Smith had specifically requested that her working hours be altered so that she would be scheduled to work only Sundays due to other employment. The employer granted the claimant's request and scheduled the claimant, however, Ms. Smith did not personally check the company schedule to determine her status and, therefore, did not report or provide notification as required.

871 IAC 24.25(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

For the reasons stated herein, the administrative law judge must conclude that the claimant voluntarily quit employment for reasons that were disqualifying. Benefits are denied.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law. The claimant is overpaid benefits in the amount of \$560.00.

DECISION:

The decision of the representative dated May 16, 2007, reference 02, is reversed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible. The claimant is overpaid unemployment insurance benefits in the amount of \$560.00.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs