

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MISTY TROUT
Claimant

APPEAL NO: 10A-UI-08933-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/23/10
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated June 18, 2010, reference 01, which held that Misty Trout (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2010. The claimant participated in the hearing with Attorney Michelle Hoyt Swanstrom. The employer participated through Matt Heldenbrand, Store Director; Dan Wampler, Assistant Vice-President of Operations; Jon Elswick, Assistant Store Director; Eric Lahart, Manager of Perishables; Angela Handling, Human Resources Manager; and Daniel Speir, Employer Representative. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time kitchen staff from December 16, 2008 through April 28, 2010. Her last day of work was April 28, 2010 and she had a meeting with the employer on April 30, 2010. The claimant was a no-call/no-show on May 15, 16, 19, 20, 26 and 27, 2010. She was considered to have voluntarily quit as of May 30, 2010.

The claimant contends she voluntarily quit due to harassment, a reduction of hours, and a safety issue. Approximately two weeks prior to her separation, she sustained an eye injury when chemicals from the grill splashed on her. She was taken to the emergency room by the employer but sustained no serious or permanent injury. The claimant said the doctor and the nurse told her and the employer representative who was with her that she needed to wear

goggles but the employer never provided goggles. The employer had no medical documentation confirming the claimant was required to wear goggles. It had really become a moot issue though since the claimant was being moved to the grocery part of the store.

The employer never guaranteed the claimant a minimum number of hours but she usually worked 25 to 30 hours. At some point in the last week or two before her separation, she was taken off the schedule completely. The employer admitted in the meeting held on April 30, 2010 that a mistake had been made and the employer mishandled the situation. The employer was not satisfied with the claimant's performance in the kitchen due to tasks not getting completed unless the claimant was given a specific directive. The claimant also frequently failed to keep her shirt tucked in even though she had been warned about it. She was also going to be moved up to the grocery section of the store because the employer felt the claimant had excellent customer service skills and would be a better fit outside of the kitchen. The employer acknowledged it was going to immediately place the claimant back on the schedule and offered her hours over the weekend of May 1, 2010 but the claimant had already made plans.

The final issue that the claimant contends prompted her to voluntarily quit was the harassment by Jon Elswick, who was a member of management. The claimant said Mr. Elswick often put his hand on her shoulder and made her uncomfortable. She contends he blew her a kiss around November 2009 but later apologized for it. He denied that allegation. The claimant said she had told Mr. Elswick that she did not like him touching her shoulder and had told two other members of management who no longer worked at the store. She also said that she mentioned it to her co-workers and that even a customer had thought it odd. The claimant called the corporate office to report the problem and she was assured it was going to be handled. She was upset that she was being moved from the kitchen to the grocery part of the store since she felt she would have to work directly under Mr. Elswick. However, the employer said that Mr. Elswick was never going to be her direct supervisor and that he was involved in all aspects of the store management.

The claimant filed a claim for unemployment insurance benefits effective May 23, 2010 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits.

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.

The claimant contends she voluntarily quit due to intolerable and detrimental working conditions. Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

While the claimant provided three specific reasons in the hearing which prompted her to quit, the transcription of the meeting she had with the employer on April 30, 2010 tells a different story. The safety issue was not mentioned, the harassment appeared to only be a minor complaint and the hours were her biggest complaint. The employer conceded that the claimant should not have been taken off the schedule and offered her hours in that meeting for the following weekend. The claimant was upset that she had not received a raise and there appeared to be some serious communication issues between the parties. The meeting ended on a positive note and the employer had no idea the claimant planned on quitting after that meeting. After looking at the preponderance of the evidence, the administrative law judge concludes that a reasonable person would not quit under like circumstances. There were certainly ongoing issues with her employment but these issues did not make the work environment intolerable and/or detrimental.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated June 18, 2010, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times

her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css