

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMARA J MARTENIA**  
Claimant

**APPEAL NO. 06A-UI-10258-HT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**HY-VEE INC**  
Employer

**OC: 09/10/06 R: 03  
Claimant: Respondent (2)**

Section 96.5(1) – Quit  
Section 96.3(7) – Overpayment

**STATEMENT OF THE CASE:**

The employer, Hy-Vee, filed an appeal from a decision dated October 11, 2006, reference 01. The decision allowed benefits to the claimant, Tamara . After due notice was issued a hearing was held by telephone conference call on November 6, 2006. The claimant participated on her own behalf. The employer participated by Manager of Store Operations Lisa Cameron, Bakery Manager Wayne Inhoff, Manager of Perishables Darin Casey and was represented by TALX in the person of David Williams.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Tamara Martenia was employed by Hy-Vee from April 27, 2005 until April 4, 2006. She was a part-time bakery clerk. At the time of hire the claimant received a copy of the employee handbook, which notified employees they are to call in and talk to their manager if they will be absent for a scheduled shift. If the manager was not present, the next manager up the “chain of command.”

The claimant’s last day of work was March 23, 2006, when she had been given a verbal counseling by the Manager of Perishables Darin Casey and Manager of Store Operations Lisa Cameron, about her tardiness, work performance and failure to adhere to the dress code. She was advised any further problems could lead to further disciplinary action.

The claimant’s next scheduled days of work were March 26, 29, 30 and April 2, 2006. She was a no-call/no-show to work for all of those shifts and was considered a voluntary quit under the provisions of the employer’s policies.

Tamara Martenia has received unemployment benefits since filing a claim with an effective date of September 10, 2006.

**REASONING AND CONCLUSIONS OF LAW:**

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 24.25(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.

The claimant is considered a voluntary quit without good cause attributable to the employer under the provisions of the above Administrative Code section.

**DECISION:**

The representative's decision of October 11, 2006, reference 01, is reversed. Tamara Martenia is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$6,930.11

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs/pjs