

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NATHAN J DAVIDSON**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL 20A-UI-14357-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/15/20**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit

**STATEMENT OF THE CASE:**

Nathan Davidson (claimant) appealed a representative's October 29, 2020, decision (reference 05) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with Hy-Vee (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 8, 2021. The claimant was represented by James Larew, Attorney at Law, and participated personally. The employer was represented by Barbara Buss, Hearings Representative, and participated by Emily Bockelman, Store Manager, and Julie Jones, Home Shopping Manager.

The claimant offered a fifty-page exhibit into evidence that it sent by mail to the employer's address of record in New Hampshire on the afternoon of January 6, 2021, for the hearing on January 8, 2021. Based on Mr. Larew's representation's, the fifty pages contained documents from the administrative file, the claimant's employment file that were not related to his separation, and a newspaper article about a store where the claimant did not work. Entry of the documents were denied into evidence because they were not relevant and the employer did not receive the documents. The administrative law judge took official notice of the administrative file.

Mr. Larew offered a prepared brief for admission into evidence. The brief had been sent in the same manner as the evidence and had not been received by the employer. Entry of the brief was denied because the employer did not receive the brief. Mr. Larew was allowed time to discuss relevant arguments related to the claimant's separation.

**ISSUE:**

The issues include whether the claimant was separated from employment for any disqualifying reason.

**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 hired on June 3, 2019, as a part-time delivery driver.

He signed for receipt of the employer's handbook when he was hired. The handbook contained the telephone number for the Human Resources Department. The number for employee assistance was posted by the time clock.

The claimant took vacation and went to Florida in March 2020. While he was there, he learned about Covid-19. When he returned, the employer asked him to quarantine from March 11, 2020, through March 30, 2020.

The claimant's girlfriend had Crohn's Disease and worked at a hospital. The hospital provided workers with masks, hand sanitizer, and gloves. The claimant returned to work on March 31, 2020, and the employer did not provide him with masks, hand sanitizer, and gloves because none were available to the employer. There was a shortage in the country. The claimant felt uncomfortable driving a delivery van, delivering items, handling cash without masks, hand sanitizer, and gloves. He wanted the same protection as was available at the hospital so he could keep his girlfriend safe.

Multiple managers worked during a shift in the store. The claimant's direct supervisor was Julie Jones. A co-worker, Trish, was not a supervisor but answered questions if Ms. Jones was not available. On March 31, 2020, the claimant mentioned his concerns about not having masks, hand sanitizer, and gloves. Trish said he could provide his own but the employer did not have access to any. The claimant did not approach his supervisor, any other supervisor, or someone in human resources about his concerns or accommodations.

On April 1, 2020, the claimant sent Ms. Jones a text message saying he had concerns about his safety. He would talk to Ms. Jones about his concerns but, either way, he was resigning his position.

Continued work was available with the employer had the claimant not resigned. The employer would have accommodated the claimant by finding a job were he did not have contact with customers.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.26(4) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The claimant did not notify the employer of his concerns. He mentioned his concerns to a co-worker when multiple members of management were in the building. The claimant quit work the next day because the employer, a grocery store, did not have the same supplies as the hospital.

Employee who receives reasonable expectation of assistance from employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. *Polley v. Gopher Bearing Company*, 478 N.W.2d 775 (Minn. App. 1991). The administrative law judge is sympathetic to the claimant's concerns for his girlfriend's health. In this case, he did not take the reasonable step of speaking to any member of management before resigning. Benefits are denied as of March 15, 2020.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

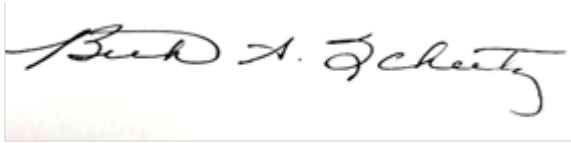
The issue of whether claimant has been overpaid unemployment insurance benefits, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

#### **DECISION:**

The representative's October 29, 2020, decision (reference 05) is affirmed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

The issue of whether claimant has been overpaid unemployment insurance benefits, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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Beth A. Scheetz  
Administrative Law Judge

January 25, 2021  
Decision Dated and Mailed

bas/scn