

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERICA L WILSON
Claimant

HY-VEE INC
Employer

APPEAL 20A-UI-08872-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 17, 2020, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on September 8, 2020. The claimant, Erica Wilson, participated and testified. The employer, Hy-Vee Inc., participated through Frankie Patterson, hearing representative. Wannette Moore, Human Resources Manager and Rachel Reed testified on behalf of Hy-Vee Inc.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed from August 30, 2019 as a full time cake decorator until her employment ended on June 18, 2020, when she voluntarily quit. Claimant's last day of work was June 18, 2020. Claimant's immediate supervisor was Rachel Reed.

On June 18, 2020, claimant met with Wannette Moore to report an incident that had happened with her co-worker, Diana Dickey, approximately three weeks earlier. Ms. Wilson stated she was taking brownies and bars out of the freezer and had provided them to her co-worker, Diana Dickey, who was icing the bars. Diana became upset with Ms. Wilson and the two became involved in a verbal argument, which ended in Diana flicking Ms. Wilson's head bandana and asking Ms. Wilson if she thought that looked cute. Ms. Reed intervened and told Ms. Wilson and Diana to be done with the issue. Ms. Wilson went on break. No further conflict occurred between the two. Ms. Wilson and Diana worked together for the next three weeks largely ignoring each other.

After meeting with Ms. Moore on June 18, Ms. Wilson met with her supervisor, Rachel Reed. Ms. Wilson told Ms. Reed that she would not continue to work at Hy-Vee if she would be assigned to shifts with her co-worker, Diana.

Ms. Wilson did not report to her scheduled shift on June 19, 2020 or for any shift thereafter. Ms. Wilson admitted she did not report her absence to anyone at Hy-Vee Inc.

Hy-Vee Inc. has a policy handbook which states that any incidents with co-workers are to be submitted in writing to the Human Resources manager so they can be properly investigated. In addition, Hy-Vee Inc. has a policy handbook which states no call, no show for three days in a row is considered job abandonment. Ms. Wilson was made aware of these policies when she received a copy of the handbook.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant had an intention to quit and carried out that intention by not reporting to her scheduled shifts after June 18, 2020.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

In this case claimant did not come back to work for her scheduled shifts after June 18, 2020. Iowa Admin. Code r. 871-24.25(27) 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 § 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 § 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:

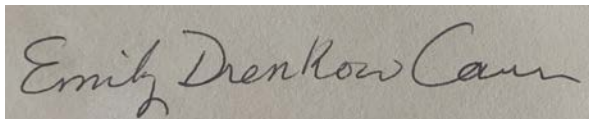
(27) The claimant left rather than perform the assigned work as instructed.

Claimant's leaving the employment was not for a good-cause reason attributable to the employer according to Iowa law. Benefits must be denied.

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>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The August 17, 2020, (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit employment without good cause attributable to the employer. Unemployment insurance benefits shall be withheld in regards to this employer until such time as claimant is deemed eligible.



Emily Drenkow Carr
Administrative Law Judge

September 15, 2020
Decision Dated and Mailed

ed/scn