

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DARLA J MILLER Claimant HY-VEE INC Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 09A-UI-09618-DT ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 04/26/09 Claimant: Appellant (2)</div>
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Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Darla J. Miller (claimant) appealed a representative's June 29, 2009 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 23, 2009. The claimant participated in the hearing and presented testimony from one other witness, Carla Deemer. The employer received the hearing notice and responded by faxing a statement to the Appeals Section on July 22, 2009 seeking to "withdraw" their appeal. While the employer had initially also filed an appeal due to some of the language in the representative's decision, the appeal was already set up on the claimant's appeal. Upon receiving the employer's "withdrawal," the administrative law judge called the employer's representative's office and left a message explaining that the hearing was set up on the claimant's appeal, so the hearing would proceed. No further response was received from the employer to indicate they would participate in the hearing on the claimant's appeal; therefore, the employer did not participate in the hearing. 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:

Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant started working for the employer in mid-March 2007. She worked part time (20 to 30 hours per week) as a kitchen clerk at the employer's Osceola, Iowa store. Her last day of work was April 24, 2009.

The claimant had been having some disputes with her kitchen manager. On about April 23 the manager posted a work schedule showing the claimant only scheduled for ten hours for the next week. The claimant then left a note for her manager complaining about the cut in hours and indicating she was going to arrange a meeting with the store manager to discuss things. The claimant did proceed to schedule a meeting with the store manager on the morning of April 27.

When the claimant came in for her meeting with the store manager, he immediately began criticizing her, saying she was being selfish and that she was not a team player. When the claimant suggested that maybe she should try to transfer to another department store, the store manager responded that he would not give her a recommendation to transfer anywhere. The claimant became very upset because of the way he was speaking to her, and proceeded to leave, saying, "I guess this isn't the job for me." The claimant believed that she was discharged due to the way the store manager treated her; the employer concluded the claimant had quit because of her statement and because she failed to report for her scheduled shifts that week.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if she quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as where a claimant believes she has been discharged and ceases reporting for work, but where the employer has not clearly informed the claimant she was discharged. 871 IAC 24.25.

Where there may be multiple reasons for a claimant's quitting, all elements must be considered to determine if any one or combination of reasons might establish good cause. Taylor v. Iowa Department of Job Service, 362 N.W.2d 534 (Iowa 1985). While effectively quitting because of a mistaken belief that she was being discharged would not be good cause, quitting because of a substantial reduction in her hours would be good cause. 871 IAC 24.26(1). "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for reducing the claimant's hours to ten hours per week, the change in the claimant's schedule which had been implemented was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The representative's June 29, 2009 decision (reference 03) is reversed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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