

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM C GIBSON**  
Claimant

**APPEAL NO: 06A-UI-08065-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 07/09/06 R: 01**  
**Claimant: Respondent (4/R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.27 – Voluntary Quit Part-Time Employment

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed a representative's August 2, 2006 decision (reference 01) that concluded Adam C. Gibson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation occurred for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2006. The claimant participated in the hearing. David Williams, a TALX representative, appeared on the employer's behalf. Cole Durrett, Rich Harney and Shelly Anderson testified on the employer's behalf. Marla Gentry observed 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 his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

Did the claimant voluntarily quit part-time employment?

**FINDINGS OF FACT:**

The claimant started working for the employer on September 2, 2005. The claimant worked part time as a stocker, a checker, a sacker and in the pick-up lane. Durrett supervised the claimant.

On July 7, 2006, Harney talked to the claimant about his attendance with Durrett present. The claimant had been absent about a dozen times since January and he had been absent a number of times in June. Even though the claimant had a doctor's statement for many of these absences, the employer saw the need to address the claimant's on-going attendance problem. The claimant did not agree that he had been excessively absent from work. The claimant did not believe the employer treated him fairly, because other employees missed more work than the claimant. During the July 7 meeting, the claimant made a comment about his 20-pound

weight restriction, and wondered if the employer could accommodate his work restriction. The employer had work for the claimant to do that did not violate his work restriction.

When the claimant indicated his back hurt on July 7, the employer allowed the claimant to leave work early. The claimant was next scheduled to work on July 8 at 7:00 a.m. When the claimant did not report to work on July 8, Anderson called him. The claimant indicated he was unable to report to work because his back still hurt. On Saturday, a customer told Durrett the claimant had been working at the Railroad Inn the night before. Durrett called this restaurant on July 8 between 6:00 and 6:30 p.m. to ask if the claimant had worked the night before. The person, who answered the phone, confirmed that the claimant had worked Friday night and that the claimant was working at that time. Durrett did not stay on the phone to talk to the claimant.

Even though the claimant did not work as scheduled on July 8, the employer scheduled him to work again on July 14 and 20. The claimant did not report to work or contact the employer anytime after July 7, 2006.

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

The main issue in this case is a credibility issue. The claimant asserted the employer discharged him during the July 7, 2006 meeting. The employer, however, contended that the claimant voluntarily abandoned his job. A preponderance of the evidence establishes the claimant voluntarily quit his employment by abandoning his job after July 7, 2006.

The employer's testimony is credible, while the claimant's testimony is not. As a result, the employer's version of events is reflected in the findings of fact.

The credibility conclusion was based on several factors. First, Anderson, who no longer works for the employer and was not present during the July 7 meeting, testified she called the claimant on July 8 to find out why he was not at work. The claimant provided no motive for Anderson to make up the fact she called and talked to the claimant the morning of July 8. The claimant, on the other hand, has a motive to deny that Anderson called and talked to him on July 8. Since the claimant's testimony on this point is not credible, legally all of his testimony can be disregarded. As a result, a preponderance of the evidence establishes the employer did not discharge the claimant on July 7. Instead, the claimant chose not to return to work after the employer reprimanded him for his absences on July 7. The claimant voluntarily quit this part-time job as of July 7, 2006.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. When a claimant quits, he has the burden to establish he quit his employment with good cause attributable to the employer. Iowa Code § 96.6-2. The law presumes a claimant quits his employment without good cause when he leaves after being reprimanded by the employer. 871 IAC 24.25(28). The facts reveal the claimant voluntarily quit his employment for reasons that would not qualify him to receive benefits if the claimant had been working full time.

When a claimant quits a part-time job without good cause, he may be eligible to receive benefits even if he has not earned ten times his weekly benefit amount when he has wage credits from other employers in his base period that make him monetarily eligible to receive benefits. 871 IAC 24.27. Since the wages credits the claimant earned from the employer during his base period cannot be considered to determine if the claimant is monetarily eligible to receive benefits, this issue is remanded to the Claims Section to review. The Claims Section shall,

determine if the claimant is monetarily eligible, determine his maximum benefit amount, determine whether the claimant worked and earned any wages during weeks he has filed a claim for benefits, and determine whether the claimant has been overpaid any benefits. If the Claims Section determines the claimant is monetarily eligible, he will be qualified to receive benefits as of July 9, 2006, provided he meets all other eligibility requirements.

**DECISION:**

The representative's August 2, 2006 decision (reference 01) is modified in the employer's favor. The employer did not discharge the claimant. Instead, the claimant voluntarily quit his part-time employment for reasons that would not qualify him to receive benefits if the claimant had been working full time. Therefore, the employer's account will not be charged. The issues of whether the claimant is monetarily eligible to receive benefits based on wages he earned from other employers during his base period, whether the claimant has earned wages during weeks he has filed claims for benefits, July 15 through September, and whether he has been overpaid are remanded to the Claims Section to investigate and issue determinations. If the claimant is monetarily eligible, he is qualified to receive benefits as of July 9, provided he meets all other eligibility requirements.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw