

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLA J MILLER
Claimant

APPEAL NO. 09A-UI-08048-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/26/09
Claimant: Appellant (4-R)

Iowa Code Section 96.5(1) – Voluntary Quit
871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Darla Miller filed a timely appeal from the May 29, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 19, 2009. Ms. Miller participated. Tim Spier of Unemployment Insurance Services represented the employer and presented testimony through Store Director Joe Deutsch, Kitchen Manager Angela Braddock and Manager of Operations Jeremy Johnson. Exhibit A was received into evidence. At the request of the employer, the administrative law judge took official notice of the documents submitted for or generated in connection with the May 27, 2009 fact-finding interview. A copy of the fact-finding materials was provided to the parties on June 9, 2009.

ISSUE:

Whether Ms. Miller voluntarily quit or was discharged from the employment. The administrative law judge concludes that Ms. Miller voluntarily quit.

Whether Ms. Miller's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Darla Miller started her part-time employment at Hy-Vee in Osceola in March 2007. During most of the employment Ms. Miller worked as a part-time kitchen clerk. Ms. Miller's immediate supervisor was Kitchen Manager Angela Braddock. Ms. Miller has a personality conflict with Ms. Braddock. Ms. Miller is diagnosed with schizoaffective disorder and takes multiple psychotropic medications to treat this condition. Store Director Joe Deutsch became Store Director for the Osceola store on January 1, 2008 and was unaware of Ms. Miller's mental health condition.

During the work-week that included April 26, 2009, Ms. Miller was only on the schedule for eight hours. Ms. Braddock made the schedule. Ms. Miller usually worked 15-20 hours per week. For the week in question, Ms. Miller had asked for Friday and Saturday off. Ms. Miller usually

worked 8.5 to 10 hours Friday through Saturday. Ms. Miller's request for time off reduced her available work hours and reduced the number hours she had on the weekly schedule.

Ms. Miller made an appointment with Mr. Deutsch to discuss the reduction in her work hours and other concerns she had about her work in the kitchen. On the morning of April 26, Ms. Miller appeared for a meeting with Mr. Deutsch. During the meeting, Mr. Deutsch addressed Ms. Miller's habit of closing the kitchen before the scheduled time and other concerns he had about her work performance. Ms. Miller stated that perhaps she should transfer to another store. Mr. Deutsch told Ms. Miller that he would not be able to recommend Ms. Miller for hire at another Hy-Vee store. This was because of the performance issues at the Osceola store. Ms. Miller became upset, raised her voice, asked for her final paycheck, left the meeting and left the store. Mr. Deutsch at no time told Ms. Miller that she was discharged from the employment or implied the same.

After Ms. Miller left the store she contacted the employer's corporate office and asserted that Mr. Deutsch had fired her. The corporate office sent Mr. Deutsch a message indicating that Ms. Miller was of the belief that she had been fired. Mr. Deutsch attempted to reach Ms. Miller at the phone number in her personnel file, but was unable to reach her. The number in the personnel file was not Ms. Miller's current phone number and Ms. Miller had not provided the store management with an updated phone number. Ms. Miller was scheduled to work the evening of April 26. Manager of Store Operations Jeremy Johnson attempted to reach Ms. Miller at the number the employer had for her, but was unable to connect with Ms. Miller. Ms. Miller did not return to the Hy-Vee Store or make further contact with the employer. The employer waited until May 4, 2009 to conclude that Ms. Miller had abandoned her employment. At that point, Ms. Miller had missed four scheduled shifts without notifying the employer.

The employer has a written policy that says three consecutive no-call, no-show absences will lead to termination of the employment.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

The weight of the evidence indicates that the April 26, 2009 verbal exchange between Mr. Deutsch and Ms. Miller was not one that would lead a reasonable person to conclude that Ms. Miller had been discharged from the employment. The weight of the evidence indicates that Ms. Miller was exceedingly sensitive to Mr. Deutsch's constructively critical remarks. Ms. Miller erroneously perceived Mr. Deutsch's comments as an attack. Even under Ms. Miller's version of the exchange with Mr. Deutsch there is no indication that Mr. Deutsch ever stated or implied

that she was discharged from the employment. Ms. Miller had been considering leaving her employment at the Osceola store, as indicated by her discussion with Mr. Deutsch about a possible transfer to another store. Ms. Miller had an ongoing personality conflict with her immediate supervisor, Ms. Braddock, which prompted her request for the meeting with Mr. Deutsch. Ms. Miller became upset during the April 26 meeting, stormed out and did not return. The weight of the evidence establishes a voluntary separation from the employment. Ms. Miller quit and was not discharged by the employer.

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 24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See Wiese v. Iowa Dept. of Job Service, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. Id. An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See Olson v. Employment Appeal Board, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

On the other hand, quits prompted by a personality conflict with a supervisor are presumed to be without good cause attributable to the employer. See 871 IAC 24.25(22).

The weight of the evidence fails to establish a change in the conditions of the employment. The evidence indicates that Ms. Miller's one-week reduction in work hours was directly related to her request to have two of her usual work days off. The weight of the evidence fails to establish intolerable and/or detrimental working conditions. The evidence indicates that Ms. Braddock

and Mr. Deutsch's comments to Ms. Miller were reasonable comments to make in the course of supervising Ms. Miller's work at Hy-Vee. The evidence specifically does not establish any instances of verbal abuse. The evidence indicates instead that Ms. Miller's perception of events was and is not especially reliable. The letter from Ms. Miller's sister is based entirely on Ms. Miller's perception relayed to the sister and restated by the sister. It, too, is unreliable. The weight of the evidence indicates that Ms. Miller voluntarily separated from the employment because of a personality conflict with Ms. Braddock and Mr. Deutsch.

Ms. Miller voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Miller is disqualified for benefits based on wages she earned through the employment at Hy-Vee until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Miller.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

This matter will be remanded to the Claims Division for redetermination of Ms. Miller's eligibility for reduced benefits based on base period wage credits from employers other than Hy-Vee.

DECISION:

The Agency representatives May 29, 2009, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment with Hy-Vee without good cause attributable to the employer. The claimant is disqualified for benefits based on wages earned through the employment at Hy-Vee until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

This matter is remanded to the Claims Division for redetermination of the claimant's eligibility for reduced benefits based on base period wage credits from employers other than Hy-Vee.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs