

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY L STUKERJERGEN
Claimant

APPEAL NO. 100-UI-13561-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/25/10
Claimant: Appellant (1R)

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

STATEMENT OF THE CASE:

Betty Stukerjergen (claimant) appealed a representative's May 20, 2010 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she voluntarily quit work with Hy-Vee (employer). A telephone hearing was held on July 19, 2010, and the representative's decision was affirmed in a decision dated July 20, 2010. The claimant appealed that decision to the Employment Appeal Board. In a decision dated September 23, 2010, the Employment Appeal Board remanded the matter to determine whether the claimant was separated for part-time employment. The administrative law judge reviewed the record.

ISSUE:

The issue is whether the claimant was voluntarily quit part-time work without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant was hired in August 2009, as a part-time pharmacy clerk trainee. She worked for three when the pharmacist asked her if the job was too stressful for her. He offered her a job as a cashier and the claimant accepted the position. On August 9, 2009, the claimant told the trainer she had surgery one month before and she was experiencing pain. The employer agreed to the claimant's absence from work. The claimant did not return. The claimant's physician indicated she was unable to perform her work as a cashier for three months from the date of the surgery. The claimant has not returned to the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work without good cause attributable to the employer.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable work was not available. Area Residential Care, Inc. v. Iowa Department of Job Service, 323 N.W.2d 257 (Iowa 1982).

The claimant left work due to an injury under the advice of her physician. The employer consented to her leaving. The claimant has failed to provide the employer with certification that she has recovered. In addition the claimant has failed to offer her services to the employer. The claimant has failed to meet the requirements of the statute and, therefore, is not eligible to receive unemployment insurance benefits. The claimant may requalify by returning to the employer with an unconditional release. The claimant could then receive benefits if regular work or comparable suitable work was not available.

An individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. However, benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or her maximum weekly benefit amount. However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27. This matter is remanded to the Claims Section for a determination of whether the claimant has sufficient

qualifying wages. The employer's account will not be subject to charge for benefits paid to the claimant.

The issue of whether the claimant is able and available for work has previously been remanded for determination.

DECISION:

The representative's May 20, 2010 decision (reference 01) is affirmed. The claimant voluntarily quit her part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what her maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues. The issue of whether the claimant is able and available for work has previously been remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css