

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JULIE A MUTO
2255 – 73RD ST
WINDSOR HEIGHTS IA 50322

HY-VEE INC
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
#511
3799 VILLAGE RUN DR
DES MOINES IA 50317

Appeal Number: 06A-UI-00129-HT
OC: 11/20/05 R: 02
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(1) – Quit
Section 96.3(7) – Overpayment

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated December 29, 2005, reference 04. The decision allowed benefits to the claimant, Julie Muto. After due notice was issued, a hearing was held by telephone conference call on January 23, 2006. The claimant did not participate personally but submitted a written statement which was submitted as Exhibit A. The employer participated by Health Market Manager Katie Rigg and Manager of Store Operations Kevin Hudachek. Kareei White observed the proceedings but did not offer testimony. The employer was represented by TALX in the person of David Williams. Exhibit D-1 was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Julie Muto was employed by Hy-Vee from May 20, 2004 until November 17, 2005. She was a part-time night stocker.

Ms. Muto was on work restrictions for problems with her hands and wrists. The last doctor's statement the employer received was dated October 21, 2005, and imposed restrictions of light use of the right hand, no heavy lifting or gripping with either hand, and no use of the left hand at all. The employer had her doing "facing" which is moving product to the edge of the shelf, and some light cleaning of the shelves. She did only light items such as Jell-O, and no work above shoulder level or below waist level.

The claimant apparently had a final doctor's statement dated November 4, 2005, but this was never received by Hy-Vee. The restrictions were much the same, but did allow light duty with both hands with breaks of five or ten minutes per hour as needed. The lifting restriction was two to three pounds for either hand and specifically stated she may face products that do not exceed the weight limits. It also said she may wear a splint, cast or support. The employer did not change her job duties since the last doctor's note of October 21, 2005.

On November 17, 2005, Ms. Muto called Manager of Store Operations Kevin Hudachek and said she was quitting for a better job and that the resignation was effective immediately. She gave no other reason. On November 27, 2005, she called and asked if she could have her job back, but the position had already been filled.

Julie Muto has received unemployment benefits since filing a claim with an effective date of November 20, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes she is.

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.

The claimant quit her job at Hy-Vee, though there appears to be some conflict as to reason she gave. In her letter she asserted she was not physically able to do the work at Hy-Vee, but she only told the employer she was quitting for a "better job." In either respect, the record does not establish good cause attributable to the employer. The record confirms the employer met the restrictions imposed by the claimant's physician. She was required to do only light facing of the shelves and did not, contrary to her written statement, have to "face the whole store" by herself.

At no point did the claimant notify the employer she would quit unless it met other restrictions on her work duties. This is required by Suluki v. EAB, 503 N.W.2d 402 (Iowa 1993) and Cobb v. EAB, 506 N.W.2d 445 (Iowa 1993). Although the employer was complying with the doctor's restrictions, Ms. Muto did not notify anyone of her intention to quit unless other accommodations were made. The judge also notes Ms. Muto did ask for her job back, which

would indicate she did not actually find the job duties as egregious as she maintained after filing for benefits. This does not constitute good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of December 29, 2005, reference 04, is reversed. Julie Muto is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$1,253.00.

bgh/kjw