

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JACQUELINE ALEXANDER
Claimant

APPEAL NO. 09A-UI-07589-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 04/19/09
Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Hy-Vee, Inc., filed a timely appeal from a representative's decision dated May 12, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits based upon her separation from Hy-Vee, Inc. After due notice was issued, a telephone hearing was scheduled for and held on June 17, 2009. The claimant participated personally. Participating on behalf of the claimant was her attorney, Mr. Christopher Spaulding. The employer participated by Mr. Daniel Spier, hearing representative, and a witness, Mr. Ryan Roberts, store manager.

ISSUE:

The issue is whether the claimant left employment with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record finds: The claimant was employed by Hy-Vee, Inc. from August of 1999 until November 18, 2008, when she voluntarily left her employment as a part-time cashier. The claimant tendered advance notice of her intention to quit after repeated requests to be moved to a job position that did not require extensive use of the claimant's hands and wrists. Ms. Alexander had made numerous requests to be transferred to other work because she continued to experience pain and medical problems with her arms and wrists for which she had undergone surgery for the work-related problem. Ms. Alexander had been released to return to work by her physician in October of 2008. Although released, the claimant began to experience similar problems as before her surgery and, therefore, made repeated requests to be transferred to a different job position that did not involve as much pushing, pulling, and lifting as the checker position required. When the employer continued to be unwilling or unable to transfer the claimant to a different job position, Ms. Alexander tendered her notice of intention to leave, citing her medical reasons as the basis for quitting.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment with good cause attributable to 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 24.25(36) provides:

Voluntary quit without good cause. 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(36) The claimant maintained that the claimant left due to an illness or injury which was caused or aggravated by the employment. The employer met its burden of proof in establishing that the illness or injury did not exist or was not caused or aggravated by the employment.

An individual who voluntarily leaves their employment must first give notice to the employer of their reasons for quitting in order to give the employer an opportunity to address or resolve the complaint. Cobb v. Employment Appeal Board, 506 N.W.2d 445 (Iowa 1993). An employee who receives a reasonable expectation of assistance from the employer after complaining about working conditions must complain further if conditions persist in order to preserve eligibility for benefits. Poly v. Gopher Bearing Company, 478 N.W.2d 775 (Minn. App. 1991).

The evidence in the record establishes the claimant repeatedly sought accommodation for her medical condition by requesting a transfer to other work. The claimant spoke to a variety of management individuals in an attempt to be transferred to a different job position that would allow her to continue in employment. The claimant gave an advance notice of quitting in hopes that the employer would recognize the necessity of her request and accommodate her. Ms. Alexander left when no other job assignments were available to her. Although the claimant had been previously released by her physician, the evidence in the record establishes that the claimant began to experience similar pain and problems that she reasonably associated with her job duties as a cashier. The claimant desired a different job within the organization that did not require substantial pulling, pushing, or lifting such as were required in the position of cashier with the company.

Based upon the evidence in the record, the administrative law judge concludes that the employer has not met its burden of proof in establishing that the illness or injury did not exist or that it was not caused or aggravated by the employment. Inasmuch as the claimant gave the

employer notice of her complaints prior to leaving employment, separation is with good cause attributable to the employer.

871 IAC 24.26(6)b 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:

(6) Separation because of illness, injury or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

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For the reasons stated herein, the administrative law judge concludes the claimant has established good cause attributable to the employer for leaving its employment. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 12, 2009, reference 01, is affirmed. The claimant quit work for reasons attributable to the employer. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

srs/kjw