

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI L GIFFORD
Claimant

APPEAL NO. 09-UI-09523-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 05/31/09
Claimant: Respondent (2/R)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's June 29, 2009 decision (reference 01) that concluded Jodi L. Gifford (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2009. The claimant participated in the hearing. Tim Spier represented the employer. Bob Teeselink, George Rienhart, and Lisa Kockler testified on the employer's behalf. 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 her employment for reasons that qualify her to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in May 2007. The claimant worked as a regular employee in the produce department. Initially, she worked full-time. In 2008, she asked the employer to reduce her hours to part-time, or an average of 32 hours a week, because working full-time and going to school was too much for the claimant. The claimant told the employer she put school before work and if the employer needed an employee who was more flexible, to let her know. Rienhart supervised the claimant.

The employer offered the claimant a job as an assistant manager, but she declined because she was going to school. The employer then hired Kockler on February 18, 2008, as an assistant manager. The claimant and Kockler had a personality conflict.

The claimant believed Kockler put her down and was very critical of the work the claimant did. When Kockler first started working, the claimant reported problems she had with her to Rienhart. He talked to Kockler and assumed the problem had been resolved. Rienhart heard about problems, between the claimant and Kockler again about six months later. He again talked to both of them and believed the problem had been resolved. From the claimant's perspective problems with Kockler had never been resolved. As a result, she reported problems to the next level of management. The claimant did not want Kockler to criticize her work, because the claimant knew how to do her job. As

of February 28, the claimant had not yet gone to Teeselink with problems she had with Kockler. Teeselink, however, knew there were problems between the claimant and Kockler.

In mid or late January 2009, the claimant told Rienhart a customer told the claimant she had heard Kockler making negative comments about the claimant to another employee at work. The customer told the claimant she did not believe Kockler was very professional. Rienhart did not investigate this complaint, because he did not believe Kockler would do something like this.

Kockler complained about working every weekend when the claimant was not. After the claimant told Rienhart there were some school classes that would be scheduled on Saturday and that she could not work certain hours because of school and her classes, he indicated that she would lose some benefits if she did not work every other Saturday. The claimant and Rienhart did not get the issues with scheduling and her school resolved.

After the claimant had been off work a few days, she returned on February 28. Before she punched in, two employees made comments that she was going to have a meeting with the store director, Rienhart, and Kockler. The claimant understood they received this information from Kockler. The claimant was upset because she expected Rienhart to let her know if there were any problems and they could work out the problems between them two of them. The claimant went to Rienhart and asked if he had scheduled a meeting for her with the store director. After talking to Rienhart, the claimant understood that the meeting had been Kockler's idea. As the claimant left, she thought she overheard Rienhart call Kockler to let her know that the claimant learned about the meeting before Teeselink had an opportunity to talk to her. When the claimant came to work on February 28, no meeting had actually been arranged with Teeselink yet. Rienhart planned to talk to him and ask for a meeting to discuss the claimant's school and work schedules between Teeselink, Rienhart, Kockler, and the claimant.

After the claimant heard Rienhart talk to Kockler, she was very upset and immediately went to him and gave him her two weeks' notice. She was extremely upset because he had not talked to her before about a scheduling problem and that Kockler talked about the claimant in front of other employees. Although the employer asked the claimant to go home so she could calm down and think about what she wanted to do before she quit, the claimant did not do this.

Instead, she then talked to Teeselink, who asked what he could do so she would continue working. They talked about going to another department; but if the claimant did this, she lost her benefits she had acquired in the produce department. At that time, the employer did not have another job to transfer the claimant to either. As a result, the employer did not know how many hours the claimant could be scheduled to work if she did not work in the produce department. Ultimately, the claimant quit as of February 28..

The claimant established a claim for benefits during the week of May 31, 2009. She has filed for and received benefits since May 31, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits employment without good cause when she leaves because of a personality conflict with a supervisor. 871 IAC 25.25 (22). The law also presumes a claimant voluntarily quits employment with good cause when she leaves because of intolerable working conditions. 871 IAC 24.26(4).

The facts establish the claimant and Kockler did not get along. Since both Rienhart and Teeselink knew there was a personality conflict between the two of them, Kockler's testimony that she had no problems with the claimant is not credible. The facts do not, however, establish that Kockler intentionally told other employees about a meeting that was going to be arranged with the claimant and Teeselink. The evidence indicates Kockler made comments on the floor to employees that were overheard by at least customer. Since Kockler did not want to work every weekend and believed the claimant had not worked a weekend for awhile or had asked for weekends off, it is entirely possible she complained about this to a co-worker. Employees also could have overheard Kockler and Rienhart talking about problems with the claimant's work and school schedule.

While Rienhart should have called or talked to the claimant before she came to work because he and/or Kockler wanted issues with her school and work scheduled discussed and/or resolved by Teeselink, he did not. Since the claimant had been working for the employer for two years, Rienhart used poor judgment when he did not talk to her ahead of time about issues he wanted Teeselink to address. The claimant, however, overreacted when she learned about a meeting with the store director. While the claimant was extremely upset, she quit her employment on February 28. She established personal reasons for quitting. The facts do not establish that she quit because of intolerable working conditions. She ultimately quit because she had a personality conflict with Kockler and did not want to continue to work with her. The claimant did not establish that she quit for reasons that qualify her to receive benefits.

Once the claimant resigned, the fact the employer did not have another position to transfer her is not relevant, because she had already quit. As of May 31, 2009, the claimant is not qualified to receive benefits.

The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment will be remanded to the Claims Section.

DECISION:

The representative's June 29, 2009 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of May 31, 2009. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw