

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD E MORRISON
Claimant

APPEAL NO. 11A-UI-07306-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/17/11
Claimant: Respondent (2-R)

Section 96.5(1) – Voluntary Quit
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Hy-Vee, Inc. filed an appeal from a representative's decision dated May 23, 2011, reference 01, which held that no disqualification would be imposed regarding Donald Morrison's separation from employment. After due notice was issued, a hearing was held by telephone on July 1, 2011. Mr. Morrison participated personally. The employer participated by Jan Nichols, Manager of Store Operations; Ray McCreery, Assistant Manager; and Chuck Ireland, Store Director. Exhibits One through Four were admitted on the employer's behalf. The employer was represented by Alice Rose Thatch of Corporate Cost Control, Inc.

ISSUE:

At issue in this matter is whether Mr. Morrison was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Morrison began working for Hy-Vee, Inc. on August 2, 2008. He was hired to work from 30 to 40 hours each week as a stocker. In August of 2009, he requested that he only be scheduled for 20 to 30 hours each week because of his school attendance. During the summer of 2010, he requested a further reduction to 10 to 20 hours each week. He was then off work on a leave of absence from June through November because of a school-related internship.

On November 14, 2010, Mr. Morrison requested that he again be scheduled for 20 to 30 hours each week as he was no longer a student. On January 3, 2011, he requested that he only be scheduled for 10 to 15 hours each week. He indicated on the availability form that he was not available to work Sunday, Monday, Wednesday, or Saturday. He was only available from 11:30 a.m. until 4:00 p.m. the remaining three days of the week. Mr. Morrison notified the employer on February 12, 2011 that he was only available to work four hours on Sundays between 8:00 a.m. and 6:00 p.m. He had taken another job elsewhere working 30 hours per week.

After January 3, 2011, Mr. Morrison was scheduled for ten hours or less per week. He was not scheduled for any hours the payroll weeks ending February 20, February 27, March 6, March 20 or March 29. The employer had previously offered him the opportunity to pick up hours in other departments. However, for various reasons, he was unable to work in the departments that had available hours. He submitted his two week's notice on April 14 and last performed services on April 24, 2011. He did not cite the reduction in hours as a reason for leaving in his written resignation.

Mr. Morrison filed a claim for job insurance benefits effective April 17, 2011. He has received a total of \$640.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code section 96.5(1). Mr. Morrison quit his job with Hy-Vee, Inc. because he was not getting enough hours. A substantial change in the terms and conditions under which an individual is hired does constitute good cause attributable to the employer for quitting. See 871 IAC 24.26(1). There is no dispute that Mr. Morrison was working fewer hours at the time of separation than he had been working at the time of hire. However, the reductions were initiated by him.

Mr. Morrison voluntarily reduced his hours from 30 to 40 down to 20 to 30 in August of 2009. After that, he continued to periodically reduce his availability in order to meet personal demands outside of work. At the time he resigned, he had reduced his availability to four hours on only one day per week. Although there was a change in the terms and conditions of Mr. Morrison's employment, it was he who made the change. The employer was only acting in response to his changes. His limited availability severely hampered the employer's ability to continue providing him with the number of hours he had been working. In spite of his limited availability, the employer did attempt to find him additional hours in other departments but that was not workable.

After considering all of the evidence and the contentions of the parties, the administrative law judge concludes that Mr. Morrison's quit was not for good cause attributable to the employer. An individual cannot claim a change in circumstances as good cause attributable to the employer when it was the individual who requested or initiated the change. For the reasons cited herein, benefits are denied.

Mr. Morrison has received benefits since filing his claim. Based on the decision herein, the benefits received now constitute an overpayment. As a general rule, an overpayment of job insurance benefits must be repaid. Iowa Code section 96.3(7). If the overpayment results from the reversal of an award of benefits based on an individual's separation from employment, it may be waived under certain circumstances. An overpayment will not be recovered from an individual if the employer did not participate in the fact-finding interview on which the award of benefits was based, provided there was no fraud or willful misrepresentation on the part of the individual. This matter shall be remanded to Claims to determine if benefits already received will have to be repaid.

DECISION:

The representative's decision dated May 23, 2011, reference 01, is hereby reversed. Mr. Morrison voluntarily quit his employment with Hy-Vee, Inc. without good cause attributable

to the employer. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible. This matter is remanded to Claims to determine the amount of any overpayment and whether Mr. Morrison will be required to repay benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css