

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW J ALBRIGHT
Claimant

HY-VEE INC
Employer

APPEAL NO. 24A-UI-01647-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/24/23
Claimant: Respondent (1)**

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

On February 12, 2024, the employer filed a timely appeal from the February 1, 2024 (reference 02) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on December 15, 2022 due to detrimental working conditions and with good cause attributable to the employer. After due notice was issued, a hearing was held on March 4, 2024. Matthew Albright (claimant) participated. Melissa Hill of Corporate Cost Control represented the employer and presented testimony through Dee CritesPavlovich and Parker Downs. Exhibits 1, 4 and 5 were received into evidence. There were no Exhibits 2, 3 or 6. The administrative law judge took official notice of the Agency administrative record of benefits paid to the claimant (DBRO). The administrative law judge took official notice of the fact-finding materials for the limited purpose of determination whether the employer participated in the fact-finding interview and if not, whether the claimant willfully misrepresented material facts in connection with the fact-finding interview.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Matthew Albright (claimant) was employed by HyVee as a part-time cook from June 2022 until December 11, 2022, when he voluntarily quit. During the last two months of the employment, Dan Skye, Food Service Manager, was the claimant's supervisor. Prior to that, Pam Diekhuis, Food Service Manager, was the claimant's supervisor. The employer discharged Ms. Diekhuis from her employment after determining she had created a hostile workplace for the claimant and other employees. The conduct Mr. Diekhuis had directed to the claimant included calling the claimant stupid and lazy.

The claimant's voluntary quit on December 11, 2022 was in response to workplace bullying and harassment perpetrated by a full-time cook, Evelyn. On November 9, 2022, Evelyn told the claimant she held him responsible for Ms. Diekhuis's discharge and had made it her goal to get rid of the claimant. At about 7:30 p.m. on November 11, 2022, Evelyn removed a warming dish of prepared food from the Chinese food area the claimant was staffing. The food was to remain out until 8:00 a.m. Evelyn asserted the food was old, directed the claimant to make new food, and threw the pan on the floor of the area the claimant had been cleaning. The Food Service Manager, Mr. Skye, had already left for the day. The claimant contacted Mr. Skye regarding the incident with Evelyn. Mr. Skye told the claimant to forego making the new tray of food, and to shut down at 8:00 p.m. as scheduled. After speaking with Mr. Skye, the claimant stepped away from his workstation to use the restroom. When he returned, he found that Evelyn had removed all food from the warming trays and was closing the workstation early, contrary to the instructions Mr. Skye had provided to the claimant. Prior to leaving for the day, the claimant learned that Evelyn has falsely told coworkers that the claimant was "having a nervous breakdown" in his work area.

After the shift ended, the claimant contacted Mr. Skye to report Evelyn's additional actions and to state that he would not be returning to the employment. Mr. Skye said they could talk about it the next day. The claimant did not report for work the next day and did not return to the employment. After the claimant had been gone for three consecutive shifts without notice to the employer, the employer documented that the claimant had abandoned the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.


Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Admin. Code r. 87124.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The evidence in the record establishes a December 11, 2022 voluntary quit with good cause attributable to the employer. The claimant quit in response to being bullied and harassed by a coworker. The perpetrating coworker specifically told the claimant she targeted the claimant due to his roll in the previous Food Service Manager being discharged from the employment. The previous Food Service Manager had targeted the claimant for verbal abuse. The pattern of harassment the claimant was subjected to created intolerable and detrimental working

conditions that could have prompted a reasonable person to leave the employment. This was not a quit based on a three-day no-call/no-show absence. Rather, the claimant notified the supervisor on December 11, 2022 that he would not be returning to the employment. The claimant was not obligated to remain in the employment and wait to see whether and to what extent the employer addressed this second round of harassing behavior. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The February 1, 2024 (reference 02) decision is AFFIRMED. The claimant voluntarily quit the employment for good cause attributable to the employer. The quit was effective December 12, 2022. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.



James E. Timberland
Administrative Law Judge

March 13, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.