

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY SMITH
Claimant

APPEAL NO: 13A-UI-13937-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/15/13
Claimant: Respondent (2)

Iowa Code § 96.4-3 - Able and Available for Work
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated December 11, 2013, reference 06, which held that Amy Smith (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 9, 2014. The claimant participated in the hearing. The employer participated through Jamie Aulwes, Assistant Director of Human Resources; Justin Andersen, Assistant Manager of Maintenance; Karla Heffron, Assistant Vice-President of Warehousing; and Ajah Anderson, Employer Representative. Employer's Exhibits One through Five were admitted into evidence. The separation issues were inadvertently left off the hearing notice. Both parties waived their right to a formal notice of these issues so they could be addressed in the hearing today.

ISSUES:

The issues are whether the claimant is disqualified for benefits and whether she was overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time maintenance associate on August 31, 2012. She was unavailable to work when she had surgery in September 2013 and she was unavailable due to medical reasons from October 27, 2013 through November 23, 2013. The claimant returned to work for five hours on November 24, 2013.

The employer offered her work on November 27, 2013 but she was unable to work due to transportation problems. The employer sent her a certified letter which she signed for its receipt on December 9, 2013. The letter advised the claimant she had until December 13, 2013 to "call Human Resources at 641-774-7619" and she would be considered to have voluntarily quit if the employer did not hear from her by that date. The claimant failed to contact the employer and was considered to have quit her employment.

The claimant filed a claim for unemployment insurance benefits effective September 15, 2013 and has received benefits after the separation from employment in the amount of \$854.00.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify her to receive unemployment insurance benefits. The claimant was medically released to return to work on November 23, 2013 and returned to work for one day but was unable to work after that due to transportation problems. Since the claimant was not able to work after November 24, 2013, she does not meet the availability requirements of the law and benefits are denied until the date of her separation.

The next issue to be addressed is whether the claimant's voluntary separation from employment qualifies her to receive unemployment insurance benefits. She is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer. Iowa Code § 96.5-1.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980) and *Peck v. Employment Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated her intent to quit and acted to carry it out by failing to contact the employer by December 13, 2013.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and benefits are denied.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The claimant is overpaid benefits in the amount of \$854.00.

DECISION:

The unemployment insurance decision dated December 11, 2013, reference 06, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$854.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css