

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DYLON J EARLY
Claimant

APPEAL NO. 10A-UI-12456-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08-08-10
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 31, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on October 29, 2010. The claimant did participate. The employer did participate through Albert Newberry, Night Crew Manager, and John Elswick, Assistant Store Director, and was represented by Tim Speir of Unemployment Insurance Services.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a night stock clerk, part-time, beginning October 23, 2009, through August 9, 2010, when he voluntarily quit. The claimant was never guaranteed any particular amount of hours per shift or per week. The claimant asked his supervisor, Albert Newberry, if he could receive more hours since he had a baby on the way. Mr. Newberry told him the only additional hours he had were in the bakery department. The claimant was then trained to work in the bakery department. On August 9 the claimant was told to go work in the bakery department for extra hours. He refused, indicating he only wanted to work as a night stocker. The claimant then left the store and never returned again. The claimant voluntarily quit his employment because he did not want to work extra hours in the bakery, despite having been told by his supervisor that the only extra hours available for him were in the bakery. The claimant could have continued to work as a night stocker, but instead abandoned his job by failing to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 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(27) 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 § 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 § 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:

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant asked for additional hours from his supervisor. He was told the only additional hours available were in the bakery department. The claimant trained and worked in the bakery department. When told by his supervisor to work in the bakery department, the claimant voluntarily quit by leaving the store without even notifying anyone he was leaving. The claimant quit because he did not want to work in the bakery, but only as a night stocker. The claimant knew that the only extra hours available were in the bakery and he worked there some hours. His decision to quit because he did not want to work extra hours, that he asked for, in the bakery is not good cause attributable to the employer for quitting the employment. While claimant's decision to quit may have been based upon good personal reasons, it was not a good-cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The August 31, 2010 (reference 01) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw