

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRUCE D MAUDLIN**  
Claimant

**APPEAL NO: 14A-UI-03797-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 03/09/14**  
**Claimant: Appellant (1-R)**

Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(4) – Job Abandonment  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 1, 2014, reference 01, that held he voluntarily quit without good cause on January 2, 2014, and benefits are denied. A telephone hearing was held on April 29, 2014. The claimant participated. Bran Mitchell, Store Operations Manager, and Ajah Anderson, Representative, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUES:**

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

Whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on October 19, 2012, and last worked for the employer as a part-time custodian on December 21, 2013. The employer had posted a work schedule that showed claimant was to work December 26 and 27. Claimant was a no-call/no-show to work for these days.

The employer posted a subsequent schedule on December 23 and claimant was set to work December 31, January 1 and 2, 2014. Claimant was a no-call/no-show to work for these days. The employer had not heard from claimant since December 21 so it effected an employment termination based on job abandonment January 2, 2014.

Claimant had an issue with his depression medication and entered the Great River mental health facility on December 24. His cell phone was taken from him. He believed a nurse representative contacted the employer to let it know about his hospitalization.

During the latter period of his hospital stay claimant had contact with relatives. He was released on January 15 and contacted an employer scheduler to see if he still had a job. He was advised he had been terminated for job abandonment.

Claimant broke an ankle on January 15 and it was placed in a boot with doctor imposed activity restrictions. He has been wearing the boot regularly to the end of March. His April 22 doctor appointment was canceled and he was hoping to get a full work release on this date.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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(4) 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 section 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 section 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge concludes claimant voluntarily quit due to job abandonment effective January 2, 2014. Although claimant last worked on December 21, the employer did not terminate until January 2.

While claimant might not have been able to contact the employer for a period from December 24, he could have made sure some relative or hospital person contacted the employer about his hospitalization. The fact he waited until his release on January 15 asking if he still had a job supports a conclusion he knew there was no advocate contact prior to that date letting the employer know what happened and it would hold his job.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements

of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

The administrative law judge further concludes claimant the issue whether he is able and available for work is remanded to claims for investigation and decision.

He broke an ankle on January 15, 2014 and remains under doctor care as of the date of this hearing. The issue is whether claimant is capable of gainful employment after his employment termination based on doctor work activity restrictions.

**DECISION:**

The department decision dated April 1, 2014, reference 0,1 is affirmed. The claimant voluntarily quit without good cause on January 2, 2014. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The able and available work issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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