

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANNA R MCBRIDE
Claimant

HY VEE INC
Employer

APPEAL 21A-UI-16307-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/09/21
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Deanna R. McBride, filed an appeal from the July 21, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit employment with the employer, Hy-Vee, Inc., for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on September 15, 2021. Pursuant to notice, the hearing was consolidated with the hearing for appeal number 21A-UI-16308-AR-T. The claimant participated personally. The employer participated through its hearing representative, Frankie Patterson, with testifying witness Mitch Worley. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant voluntarily quit 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: Claimant was employed full-time as an assistant manager from August 17, 2011, until this employment ended on April 30, 2021, when she resigned.

Claimant contracted COVID-19 in October 2020. She was very ill for five months thereafter. She was off work during that time while she recovered. She went back to work in March 2021, but promptly became ill again. She again took leave for approximately three or four weeks. In April 2021, claimant returned to work. She returned with doctor-imposed restrictions that stated she needed to take a break every couple of hours for 10 or 15 minutes. The first week she returned, she had little trouble taking these needed breaks. However, the second week, she began having difficulty taking breaks. She discussed the issue with her supervisor, Erica Powell, who apologized and said she would work to get claimant her breaks, but the store was short-staffed. Claimant was working long shifts and was not getting the breaks she needed. She was not told she could not take breaks, but she had to cover various functions in the store, so she did not feel she could take the breaks when she needed to take them.

On April 30, 2021, claimant concluded that she needed to quit employment. She verbally told supervisors Chad Bowlman and Jason Buswitz that, due to her health, she needed to take time off, and she resigned her employment effective immediately. Claimant's doctor did not explicitly tell her she needed to quit her employment. The doctor did state that if claimant and her husband could afford it, claimant would benefit from additional time off work in order to fully recover.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was without good cause attributable to the employer.

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871—24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

(a) Obtain the advice of a licensed and practicing physician;

(b) Obtain certification of release for work from a licensed and practicing physician;

(c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or

(d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871—24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant decided to resign her position when she began having trouble taking the breaks recommended by her doctor. Though she did speak with her supervisor about the issue, she did not approach anyone else with decision-making authority to assist in ensuring she received the breaks she needed. The evidence also does not establish that she provided any notice to the employer that, if she was unable to take the breaks she needed, she would resign her employment. Accordingly, the employer did not have a chance to correct the issue before claimant resigned.

Claimant has not established that the medical condition was work related, as is her burden. While claimant did request adherence to doctor's restrictions, she did not pursue them long before she resigned her employment, nor did she provide the employer the opportunity to address her concerns before resigning. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The July 21, 2021, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

September 21, 2021
Decision Dated and Mailed

ar/ol

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are unemployed or continue to be unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

ATTENTION: On May 11, 2021, Governor Reynolds announced that Iowa will end its participation in federal pandemic-related unemployment benefit programs effective June 12, 2021. The last payable week for PUA in Iowa will be the week ending June 12, 2021. Additional information can be found in the press release at <https://www.iowaworkforcedevelopment.gov/iowa-end-participation-federal-unemployment-benefit-programs-citing-strong-labor-market-and>.