

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**PENNY S HILL**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 22A-UI-04602-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/09/22  
Claimant: Appellant (4)**

Iowa Code Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

**STATEMENT OF THE CASE:**

On February 15, 2022, Penny Hill (claimant) filed a timely appeal from the February 10, 2022 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit without good cause attributable to the employer. The deputy referenced an erroneous January 10, 2021 quit date. After due notice was issued, a hearing was held on March 25, 2022. Claimant participated. Frankie Patterson of Corporate Cost Control represented the employer and presented testimony through Glenda Bielenberg and Carrie Ellis. Exhibit A was received into evidence.

**ISSUES:**

Whether the claimant voluntarily quit without good cause attributable to the employer.  
Whether the claimant voluntarily quit to accept other or better employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:  
The claimant, Penny Hill, was employed by Hy-Vee as a part-time cashier at the Hy-Vee store in Denison from September 28, 2021 until November 16, 2021, when she voluntarily quit due to dissatisfaction with the number of work hours. Glenda Bielenberg, Accounting and Human Resources Manager for the Denison store, hired the claimant for the part-time employment. The employer does not guarantee a particular number of hours to part-time employees. Part-time employees usually receive from zero to 29 hours per week. At the time of hire, the claimant requested full-time hours. The employer told the claimant that was not possible. The claimant testified the number she cited was 28 hours per week. However, in the online appeal, the claimant references 20 to 24 hours per week. The claimant told Ms. Bielenberg she needed a certain number of hours to make the employment work for her. Ms. Bielenberg responded, "Okay." The employer's response was an acknowledgment of the request, not a guarantee of a particular number of hours in the part-time employment. Ms. Bielenberg prepares the work schedule. . The employer uses a Monday through Sunday work week for scheduling purposes. The employer initially scheduled the claimant for three shifts per week, which provided 12 to 18 hours per week. During the work week that started October 25, 2021, the employer only

scheduled the claimant for one shift. Prior to the posting of that weekly work schedule, the claimant has been absent one day, October 2, 2021, which did not factor in the number of hours the employer scheduled the claimant to work. During the work week that started November 1, 2021, the employer scheduled the claimant to work two shifts. The employer does not know the number of hours the employer scheduled the claimant the following week. Early in the employment the claimant spoke her supervisor, Front End Manager and Customer Service Manager, Sheila Launderville, about not getting the number of hours she had expected to receive from the employment. Ms. Launderville told the claimant she would receive more hours as she gained experience in the employment. The claimant did not approach Ms. Bielenberg with her concern about the number of work hours.

On November 16, 2021, the claimant called the workplace and requested to speak with a manager. The claimant spoke with Carrie Ellis, Assistant Manager for Store Operations. The claimant told Ms. Ellis she was not coming to work that day. When Ms. Ellis asked why, the claimant stated she was not getting enough hours and needed to seek other employment. The claimant did not reference having accepted other employment. The employer had continued part-time employment available to the claimant.

The claimant asserts that she accepted new full-time employment on November 15, 2021, the day before she notified Hy-Vee of her quit. The claimant responded to an online job posting at jobhat.com for a full-time remote receptionist position with McGowan Construction, purportedly located in Rochester, Minnesota. The online posting did not provide a physical address for the employer, but instead provided a post office box. Once the claimant submitted her application, the purported prospective employer called the claimant, held a telephonic interview, and offered the claimant the position. The claimant was supposed to call the next day to arrange training. However, when the claimant called the next day, the claimant encountered a number that had been disconnected. A reasonable person would conclude the claimant was likely the victim of a scam and that there was no bona fide job offer. The claimant received nothing in writing from the purported prospective employer. When the claimant attempted to locate her online application, she was unable to locate the application. The claimant did not commence employment with McGowan Construction. In light of her decision to quit the Hy-Vee employment on short notice, the claimant elected not to ask Hy-Vee to allow her to rescind her quit.

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

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

The weight of the evidence in the record establishes a November 16, 2021 voluntary quit without good cause attributable to the employer. The claimant quit due to dissatisfaction with the number of hours provided in the part-time employment and in response to the offer of full-time employment with another prospective employment. The weight of the evidence fails to support the claimant's assertion that Hy-Vee agreed to provide a particular number of hours in the part-time employment. Because the voluntary quit was without good cause attributable to Hy-Vee, that employer's account will not be charged for benefits. The weight of the evidence indicates the claimant accepted the offer of new employment in good faith. But for the accepted job offer, the claimant would not have quit the Hy-Vee employment when she did. Either the job offer was legitimate and rescinded after the claimant's quit from Hy-Vee or the job offer was a scam. Regardless, based on the accepted job offer, the claimant immediately requalified for unemployment insurance benefits. The claimant is eligible for benefits, provided the claimant meets all other eligibility requirements.

**DECISION:**

The February 10, 2022 (reference 01) decision is MODIFIED in favor of the claimant/appellant. The claimant voluntarily quit the employment without good cause attributable to the employer, but for the sole purpose of accepting other, better employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer account for Hy-Vee, Inc. shall not be charged for benefits.



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James E. Timberland  
Administrative Law Judge

April 1, 2022  
Decision Dated and Mailed

jet/jh