

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CHERYL L HINRICHSEN
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HY-VEE INC
C/O TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

HY-VEE INC
C/O TALX UCM SERVICES INC
3799 VILLAGE RUN DR #511
DES MOINES, IA 50317

Appeal Number: 05A-UI-03812-DT
OC: 05/23/04 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
871 IAC 24.26-6-b – Work-related Illness or Injury

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's April 1, 2005 decision (reference 03) that concluded Cheryl L. Hinrichsen (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 3, 2005. The claimant participated in the hearing. David Williams of TALX UC Express appeared on the employer's behalf and presented testimony from two witnesses, Scott James and Trish McElderry. During the hearing, Employer's Exhibit One was entered into evidence. The hearing notice also included an able and available issue, but upon learning that the able and available issue had been addressed in another decision issued on April 5, 2005 (reference 06) that concluded that claimant was not eligible until after she had received a medical release effective April 2, 2005, the employer waived pursuing the able and

available issue, but wished to focus on the separation issue. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on January 2, 2003. She worked full time as kitchen clerk in the employer's Davenport, Iowa store. Her last day of physical work was April 14, 2004. The claimant filed a workers' compensation claim in May 2004 asserting that on February 20, 2004 she had strained her back doing some lifting in the workplace. The claimant made some initial comments to the employer regarding her possible injury, but did not file the actual claim until she had seen her own doctor on or about April 12, 2004. He informed her that he felt her lower back condition was related to her work, and after giving her restrictions against lifting and twisting he referred her to a neurologist. She saw the neurologist on or about May 5, 2004. He also gave the claimant the impression her condition was related to her work, and continued her restrictions.

As the result of the claimant filing the workers' compensation claim, the claimant went to see the employer's workers' compensation carrier's doctor on June 4, 2004. That doctor did not indicate anything to the claimant to suggest that her condition was not work related, but discussed the possibility of follow up physical therapy. Shortly thereafter, the employer's workers' compensation carrier denied the claimant's claim, and no action was taken to have the claimant follow up on further treatment.

The claimant still pursued her workers' compensation claim, however, and on March 19, 2005 the claimant and the employer entered into a settlement of the claim. The claimant also signed a release of other liability on the part of the employer which also specified that "I have voluntarily resigned from my employment . . . prior to the execution of this agreement."

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code section 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 Code section 24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

The claimant has satisfied the requirements of the rule. She established that her two doctor's had indicated that her condition was either caused or at least related to the workplace. The employer did not provide any more specific medical evidence to the contrary. The employer was unable or unwilling to provide reasonable accommodation in order to retain the claimant's employment. "Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's April 1, 2005 decision (reference 03) is affirmed. The claimant voluntarily left her employment with good cause attributable to the employer. Benefits are allowed, provided she is otherwise eligible.

ld/sc