

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

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DES MOINES IA 50310

HY-VEE INC
C/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

TALX UC EXPRESS
3799 VILLAGE RUN DR #511
DES MOINES IA 50317

Appeal Number: 05A-UI-07952-ET
OC: 07-10-05 R: 02
Claimant: Appellant (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 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 2, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 6, 2005. The claimant participated in the hearing with former meat cutter Jeff Ross. Jim Fitzgerald, Manager of Perishables; Kevin Pierce, Manager of General Merchandise; Lisa Cameron, Manager of Store Operations; and David Williams, Employer's Representative, participated in the hearing on behalf of the employer. Sarah Lloyd, Human Resources Coordinator, observed the hearing but did not participate.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time meat cutter for Hy-Vee from March 17, 2004 to July 3, 2005. On June 28, 2005, the claimant left the store after his shift with a sack of what appeared to be items from the store and once he got outside Kevin Pierce, Manager of General Merchandise, stopped him and said he needed to see a receipt for the items because he did not go through a register. The claimant had some receipts on top of the sack that did not appear to match what was in the sack and stated he had picked up some trash, including receipts, in the store intending to throw them away before he left but had not done so. One receipt showed the purchase of a carton of cigarettes and the claimant showed Mr. Pierce an unopened carton of cigarettes. The sack also contained an unopened carton of a refrigerated parfait desert, and a roll of duct tape. There were other things in the sack but Mr. Pierce was unable to see them. Mr. Pierce asked what register the claimant used and the claimant said he did not go through a register because the sack contained personal items rather than things from the store, which was inconsistent with his showing Mr. Pierce a receipt for a carton of cigarettes. Mr. Pierce asked him to return to the store and the claimant said, "This is bullshit," and walked to his vehicle. On June 29, 2005, Jim Fitzgerald, Manager of Perishables, met with the claimant. Lisa Cameron, Manager of Store Operations, was also present as a witness. Mr. Fitzgerald asked the claimant about the incident and if he had a receipt and the claimant stated he did not and that the items in the bag were personal. Mr. Fitzgerald eventually said he did not feel the conversation was going anywhere and he would have to contact safety and security and the claimant could not work that day. The claimant was next scheduled to work July 1, 2005, and Mr. Fitzgerald told him that safety and security would be there at that time and the claimant said he wanted his attorney there and the employer said that was fine. The claimant did not call or show up for the meeting July 1 or for work July 2 or 3, 2005, and the employer determined he voluntarily quit his job.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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. 871 IAC 24.25. Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(21). Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3), (4). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. Mr. Pierce saw the claimant leaving with a bag without going through a check out line and consequently it was not unreasonable for him to approach the claimant when he left the store and ask if he had a receipt for the items. The claimant stated he did not. While the claimant maintains all the items in his bag were personal items, the fact that he refused to return to the store with Mr. Pierce to resolve the situation indicates there

were things in his sack he did not want Mr. Pierce to see and while he may have felt it was insulting or demeaning to be asked to return to the store, it does not seem too high a price to prove his innocence. Additionally, because the claimant failed to call or show up for work July 1, 2005, to meet with the safety and security people and take advantage of another opportunity to try to prove his innocence, and did not call or show up July 2 or 3, either, make his actions appear more suspect. While the claimant maintains his employment was terminated July 29, 2005, both Mr. Fitzgerald and Ms. Cameron credibly testified the claimant was told to return July 1, 2005, to meet with the safety and security personnel. Consequently, the administrative law judge concludes the evidence demonstrates the claimant voluntarily quit by abandoning his job by failing to call or report for work July 1, 2 and 3, 2005, in violation of the employer's policy. Therefore, benefits are denied.

DECISION:

The August 2, 2005, 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.

je/tjc