

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MASOOD ASADZADEHFARD
Claimant

APPEAL NO. 12A-UI-12434-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 09/16/12
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's October 10, 2012 decision (reference 01) that concluded Masood Asadzadehfard (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 8, 2012. The claimant participated personally. The employer was represented by Sue Coppola, Hearing Representative, and participated by Hilary Brown, Human Resources Manager; Josh Grimes, Manager of Perishables; Mike Henry, Night Stock Manager; Anthony Farmakoulas, Night Stock Manager; Tim Carney, Night Stock Manager; and Tom Hamilton, Store Director. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 11, 2011, as a part-time night shift stock person. The claimant signed for receipt of the employer's handbook. The employer's policies require an injured worker to report an injury to a manager within 90 days of the injury. The policies also require the manager to notify the human resources department when a worker reports an injury. Managers are not to tell workers to report the injury to someone else.

On May 24, 2012, the claimant injured his left knee at work trying to move a pallet of cans. He thought the pain would go away and did not report it immediately. On June 7, 2012, the claimant reported the injury to two night stock managers. They told the claimant to tell the manager of perishables. The two night stock managers do not remember the conversation. The claimant went to the manager of perishables who offered to send the claimant to the hospital. The claimant declined the hospital at that time. The employer did not complete a

report of injury and did not notify the human resources manager. The manager of perishables did not remember the conversation.

On August 4, 2012, the claimant was assaulted by a customer and sustained scratches. Law enforcement was called and a police report filed but the employer did not send the claimant for treatment, notify the human resources manager, or complete a report of injury. The customer was allowed to continue shopping in the store.

On September 7, 2012, the claimant was limping and told the manager of perishables that he felt he could not work due to the work injury. The manager of perishables did not send the claimant to a physician or complete a report of injury. He told him to contact the human resources manager. The claimant could not reach the human resources manager immediately.

On September 9, 11, 13, and 14, 2012, the claimant properly reported his work-related injury to a night stock manager. The night stock manager did not complete a report of injury or notify the human resources manager.

On September 17, 2012, the claimant was able to reach the human resources manager. She completed a first report of injury. On September 28, 2012, the workers' compensation company sent the claimant a letter stating the claimant reported the injury to the employer too late for the injury to be covered. The claimant never returned to work because he felt unsafe at work. No physician has told the claimant he cannot work.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes the claimant voluntarily quit work with 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.

871 IAC 24.26(4) 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:

(4) The claimant left due to intolerable or detrimental working conditions.

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). It would be reasonable for the employee to inform the employer about the conditions the employee believes are intolerable or detrimental and to have the employee notify the employer that he intends to quit employment unless the conditions are corrected. This would allow the employer a chance to correct those conditions before a quit would occur. However, the Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of

two injuries and the employer provide the claimant a safe environment. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits.

The next issue is whether the claimant was able and available for work. For the following reasons the administrative law judge concludes he is not.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was not restricted from working by a physician. He is considered to be available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's October 10, 2012 decision (reference 01) is affirmed. The claimant voluntarily left work with good cause attributable to the employer. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css