

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALYSSA L ASHE**  
Claimant

**APPEAL NO. 12A-UI-01751-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 01/08/12**  
**Claimant: Appellant (1)**

Section 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Alyssa Ashe filed a timely appeal from the February 9, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 8, 2012. Ms. Ashe participated. Paula Mack of Corporate Cost Control represented the employer and presented testimony through Tim Potts. Exhibits A, B and C were received into evidence.

**ISSUE:**

Whether Ms. Ashe's voluntary quit was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Alyssa Ashe was employed by the Hy-Vee on University Avenue near Drake University in Des Moines as a wine and spirits clerk from June 2010 until October 8, 2011, when she voluntarily quit. Ms. Ashe's immediate supervisor was Department Manager Chris Coston. Tim Potts was the Store Director.

Mr. Potts hired Ms. Ashe to work essentially full-time hours, but called her a part-time employee throughout the employment. At the start of the employment, the employer provided Ms. Ashe with an employee handbook. The handbook indicated that Hy-Vee hourly employees were divided into three classifications: full-time employees, who by definition usually worked 40 hours per week or more, part-time employees, who generally worked less than 30 hours per week, and "regular-time" employees who usually worked 30 hours or more per week. Part-time employees received no benefits. Full-time employees received paid holidays, vacation and other benefits typically associated with full-time employment. Regular-time employees were to receive prorated holiday and vacation pay benefits based on the number of hours they worked per week. A reclassification of employees from one group to another was within the discretion of the Store Director, Mr. Potts.

Ms. Ashe's work hours averaged 36 hours per week. Out of 72 weeks Ms. Ashe worked for the employer, she worked less than 30 hours during only 10 weeks. She had more than 30 hours

or more during 62 weeks, 35 hours or more during 49 weeks, 38 hours or more during 30 weeks and 40 hours or more during 16 weeks.

In March 2011, Ms. Ashe approached Mr. Coston with a request to be reclassified as a regular-time employee. Mr. Coston agreed to speak to Mr. Potts. Mr. Coston reported back that Mr. Potts was too busy to address the matter at that time. Ms. Ashe reinitiated the discussion in April, but then decided to defer bringing it up because Mr. Coston suffered a heart attack. In May, Ms. Ashe approached Assistant Store Director Josh Roderick about being reclassified as regular-time. Mr. Roderick reported back that Mr. Potts had said there would be a meeting to discuss the matter once Mr. Coston returned from medical leave. Mr. Coston returned to his full-time duties in August. Ms. Ashe raised the reclassification issue again, but was unable to secure a meeting with Mr. Potts.

On October 6, Ms. Ashe telephoned the employer's corporate office to inquire about being reclassified. Ms. Ashe explained her inability to get a meeting with Mr. Potts to discuss the issue. A representative of the corporate office told Ms. Ashe that a human resources associate would get back to her.

On October 7, 2011, Ms. Ashe went to Mr. Potts' office with the intention of securing a meeting to discuss reclassifying her to regular-time status. Mr. Potts raised his voice and said he doubted she even averaged 30 hours a week. When Ms. Ashe disagreed and suggested that documentation of her work hours would confirm she worked more, Mr. Potts shouted at her that he doubted she averaged 30 hours per week. While Ms. Ashe was in Mr. Potts' office, she noticed a memo from the corporate office detailing her call the day before. Mr. Potts did not mention the memo. Ms. Ashe viewed the presence of the memo as an invasion of her privacy. Before Ms. Ashe left Mr. Potts' office, he offered to meet with her the next week. Based on how the October 7 interaction had gone, Ms. Ashe concluded the subsequent meeting would be fruitless.

Ms. Ashe appeared for the start of her shift on October 8, but then left an hour into the shift. Mr. Potts was not at the store. Ms. Ashe told two assistant managers that she was quitting the employment and left the store. She did not return.

Hy-Vee was Ms. Ashe's sole base period employer.

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

Iowa Code § 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 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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Mr. Potts' dragging of his feet on the matter of Ms. Ashe's request to be reclassified to regular time, as the employer's written policy indicated she should, appears unfair, but does not rise to the level of intolerable or detrimental working conditions. Ms. Ashe had been working under the same terms since shortly after beginning the employment. The evidence does not support Mr. Potts' assertion that the reclassification was delayed due to poor attitude on Ms. Ashe's part. The evidence indicates instead that Mr. Potts wanted the benefits of Ms. Ashe's near full-time labor, but did not want to provide vacation and holiday benefits in keeping with company guidelines. The evidence indicates that Ms. Ashe won a concession from Mr. Potts on October 7 by his agreement to meet with her the next week and had that to look forward to if she had stuck around another week.

The evidence does not support Ms. Ashe's assertion that Mr. Potts signaled on October 7 the fruitlessness of her continued quest to be reclassified. Ms. Ashe made other contradictory assertions about the October 7 meeting. Ms. Ashe speaks on the one hand about her military background and following the chain of command, but then appears overly sensitive about Mr. Potts barking at her when she showed up at his office unannounced and after having complained to the corporate office about him. The evidence fails to indicate any breach of Ms. Ashe's privacy through the corporate office's sharing of her inquiry and complaint with the Store Director, since he was the one who would have to make the reclassification decision.

The weight of the evidence strongly suggests that Ms. Ashe quit because she was mad at Mr. Potts and, as she says, felt unappreciated. Though Ms. Ashe faced challenges in the employment due to the nature of the department she worked, the evidence fails to establish an intolerable or detrimental working conditions in connection with her actual day-to-day work in that department. Ms. Ashe's assertion that inappropriate comments were made may well be true, but the evidence fails to establish that she found any of this to be intolerable or detrimental at the time, or that any of this prompted her decision to leave the employment.

Based on the evidence in the record and application of the law, the administrative law judge concludes that Ms. Ashe voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Ashe is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Ashe.

**DECISION:**

The Agency representative's February 9, 2012, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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