

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LORI A PAINTER**  
Claimant

**APPEAL NO. 07A-UI-6241-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 06/03/07 R: 03**  
**Claimant: Respondent (2)**

Section 96.5(1) – Quit

**STATEMENT OF THE CASE:**

The employer, Hy-Vee, filed an appeal from a decision dated June 18, 2007, reference 01. The decision allowed benefits to the claimant, Lori Painter. After due notice was issued, a hearing was held by telephone conference call on July 10, 2007. The claimant participated on her own behalf and with witnesses Amber Painter and Amy McGrath. The employer participated by Human Resources Manager Stacy Sassman and Assistant Produce Manager Rick Webber and was represented by TALX in the person of David Williams

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Lori Painter was employed by Hv-Vee from December 14, 2005 until May 30, 2007, as a part-time salad bar clerk.

On May 30, 2007, the claimant did not come to work because she was ill and went to the emergency room for treatment. She had called in at 4:00 a.m. and left a message with a night crew employee to say she would not be at work, but apparently this message did not make its way to her supervisor, Assistant Produce Manager Rick Webber. He thought she was no-call/no-show to work and left a message on her cell phone that morning, saying she had left him to do all the work alone and he “could not believe [she] would do this to [him].” He also said if she did not come in to work, she did not have a job.

This message was accessed by the claimant’s daughter, Amy McGrath, around 9:30 a.m., but she did not relay it to the claimant until later in the day. By that time, the claimant had been released from the emergency room with a doctor’s statement excusing her from work and allowing her to return to work on June 1, 2007.

Ms. McGrath took the doctor’s note into the store late in the evening of May 30, 2007, and left it with a part-time salad bar clerk named Katie, and said that her mother would not be returning because she did not like the way Mr. Webber had spoken to her. Neither Ms. McGrath nor

Ms. Painter, attempted to talk with a store manager or the human resources department to explain the situation or make a complaint about Mr. Webber's message. The claimant stated she "did not want to work" for a store that "treated me like that." She felt Mr. Webber had fired her via the phone message, but he does not have the authority to hire or fire employees.

Continued work was available to the claimant, and her name remained on the schedule until June 10, 2007, but she did not return to work. She had told Mr. Webber in the past that she was not happy working for Hy-Vee because she could not get a full-time position and was considering looking for another job.

Lori Painter has received unemployment benefits since filing a claim with an effective date of June 3, 2007.

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

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 24.25(21) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (21) The claimant left because of dissatisfaction with the work environment.

The claimant did call in and report she would not be to work on May 30, 2007, but did not leave the message with any manager or supervisor, merely someone who worked the night crew. The message did not get where it needed to go and Ms. Painter did not call again to make sure her supervisor knew what the situation was. She did have a note from her doctor but did not supply it to Mr. Webber, or any other member of management, until late in the evening.

The message left by Mr. Webber stated if she did not come to work, she would not have a job, which left the burden of communication on the claimant, or someone on her behalf, to return the call immediately and explain the situation, but many hours passed before any effort was made to do this. The claimant did not make a good-faith effort to resolve the situation by talking to the store manager or human resources, but elected not to return to work. The record establishes the claimant quit without good cause attributable to the employer due to dissatisfaction with the work environment and a conflict with her supervisor.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which she is not entitled. These must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The representative's decision of June 18, 2007, reference 01, is reversed. Lori Painter is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. She is overpaid in the amount of \$910.00.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw