

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER A CHRIS**  
Claimant

**APPEAL NO. 11A-UI-01661-H2T**

**ADMINISTRATIVE LAW JUDGE  
NUNC PRO TUNC DECISION**

**HY-VEE INC**  
Employer

**OC: 10-31-10  
Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 1, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 9, 2011. The claimant did participate. The employer did participate through Jeremy Hayes, Manager of Perishable Items and was represented by John Fiorelli, of Corporate Cost Control.

**ISSUES:**

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

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a cash accountability regular time beginning April 15, 2010 through November 2, 2010 when he voluntarily quit.

The claimant voluntarily quit his employment because he thought another employee was getting paid more than he was and he did not want another employee assigned to the cash accountability position. When the claimant was hired he was not promised any promotions or pay raises. The claimant was never the only person to work in the cash accountability position. The employer regularly and routinely has at least four employees assigned to that position so that they can cover different shifts. No one employee could work all the shifts. The claimant was given performance evaluations in accordance with the employer's policies. He was not treated any differently than any other employee. The claimant was hired as a part-time employee and then moved to regular employee status which meant he would work up to 32 hours per week. He was not guaranteed any particular number of hours. The claimant was paid \$8.50 per hour when he voluntarily quit his employment.

On November 2, another employee, Jessica, was promoted to a cash accountability position. The claimant learned that Jessica had been promoted and decided to quit because he thought she was being paid more than he was. Prior to her promotion Jessica was being paid \$8.00 per hour. After her promotion she was raised up to \$8.25 per hour, less than the claimant. Jessica was not given a performance evaluation when she was promoted; she was just told that she was being moved into the new position. The claimant's hours were not cut because Jessica or any other employee was hired. The employer needs and employs more than one employee to work in the cash accountability position. After the claimant quit, someone else was hired for his position.

In July 2010 prior to his quitting the employer had offered the claimant a position as second assistant manager. Despite the fact that he would have been paid more money and would have worked more hours the claimant turned the promotion down. The claimant was also upset that the employer had not selected him for the scanning position for which he applied. The employer determined that the claimant was overqualified for the position. The employer was not under any obligation to promote the claimant to a position for which they believed him to be overqualified. Additionally, the top pay for the scanning position was \$7.50 per hour and the claimant was making more than that.

Claimant has received unemployment benefits since filing a claim with an effective date of October 31, 2010.

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

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

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.

871 IAC 24.25(13) 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 § 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 § 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that

intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant quit because he did not want the employer to hire another employee into the cash accountability position. The employer has the right to allocate its personnel in accordance with its needs and available resources. The claimant was never promised any pay raises or promotions. He was not treated any differently than any other employee. The claimant has not established any good cause attributable to the employer for his quitting. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. 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.

b. (1) 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. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment may not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. If so, the employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits.

**DECISION:**

The February 1, 2011 (reference 01) decision is reversed. Claimant voluntarily left the 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.

**REMAND:**

The matter of determining the amount of the potential overpayment and whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

---

Teresa K. Hillary  
Administrative Law Judge

---

Decision Dated and Mailed

tkh/pjs/pjs