

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA I JAMES
Claimant

HY-VEE INC
Employer

APPEAL 16A-UI-07050-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/22/16
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 14, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on July 14, 2016. The claimant Jessica James participated and testified. The employer Hy-Vee Inc. participated through hearing representative Sabrina Bentler, human resource manager Nancy Richardson, assistant manager of store operations Shawn Patterson, and customer care educator Mark Hubler.

ISSUE:

Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a cashier from December 19, 2015, until this employment ended on March 8, 2016, when she voluntarily quit.

Upon being hired by the employer in December, claimant immediately began to feel like she was being singled out and treated differently. Claimant gave several specific examples such as being rotated around and assigned to the fast lane more often than other employees, not getting her name badge until a day after everyone else, and not being given full computer training. Claimant also noticed that it seemed like more customers came to her line with large alcohol purchases or items that were placed behind the register than any other cashier. Claimant reported that the employer, overall, was making her job difficult to perform, making her very anxious about work. This anxiety resulted in several physical symptoms that required claimant to take some time off work. Claimant was seen and treated by a doctor for these symptoms. Claimant's doctor could not say for certain that her condition was caused by her work and did not specifically advise her that she needed to quit her job due to her medical condition. The employer was aware that claimant was having some health issues, but claimant never told the

employer she believed they were related to her work or that she would have to quit if things did not improve. Sometime in March 2016, claimant believed it may have been March 8, she informed the employer she was not going to return to work and was resigning effective immediately. Had claimant not quit, work would have continued to be available to her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was 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.

Iowa Admin. Code r. 871-24.25(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.

Here, claimant voluntarily resigned because she felt she was being subjected to a hostile work environment. Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

Claimant testified that overall, the employer did things to make her work more difficult than other employees. While claimant may have found her work environment to be stressful and unfair at times, she did not provide any information to indicate that it was dangerous or that she was subjected to overly oppressive work conditions. Claimant did not allege anyone at the employer made any comments or took any action toward her that would be considered threatening or otherwise abusive. Though claimant certainly may have found her work environment unsatisfactory, and while she may have had good personal reason for leaving, she has not shown that it was hostile.

Claimant also testified that she resigned due to medical issues.

Iowa Code section 96.5-1-d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

In 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement added to rule 871-24.26(6)(b), the provision addressing work-related health problems. *Hy-Vee, Inc. v. Emp't Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Claimant decided to resign her position due to medical problems she was having, caused by work-related anxiety. Claimant spoke to her doctor about her symptoms, but was not advised to resign. Claimant did not speak to the employer about her condition prior to resigning, or indicate that she would have to quit if the situation did not improve. The employer testified work would have continued to be available to claimant had she not resigned.

Claimant has not established that the medical condition was work related or that treating medical personnel advised her to quit the job, as is her burden. Nor did she request an accommodation from the employer before quitting. While claimant's leaving may have been based upon good personal reasons, it was not for a good-cause reason attributable to the employer according to Iowa law. Benefits are denied.

DECISION:

The June 14, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as claimant is deemed eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs