

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GINGER A HUSTON**  
Claimant

**APPEAL NO. 11A-EUCU-00450-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 03/13/11**  
**Claimant: Appellant (4-R)**

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment

**STATEMENT OF THE CASE:**

Ginger Huston filed a timely appeal from the April 22, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 24, 2011. Ms. Huston participated. Alice Thatch of Corporate Cost Control represented the employer and presented testimony through Tina Wittholt, manager of store operations. The administrative law judge provided the claimant with an opportunity to submit documentation of new employment. The claimant submitted the documentation and it was received into the record as Exhibit A. A copy of the same material was forwarded to the employer.

**ISSUES:**

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

Whether Ms. Huston voluntarily quit for the sole purpose of accepting other employment and performed work for the new employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ginger Huston was employed by Hy-Vee as a part-time clerk in the Chinese Express from December 2009 until March 31, 2011, when she voluntarily quit. During the employment, Ms. Huston was a college student. Prior to the quit, Ms. Huston obtained and completed an internship with Louisa County. Toward the end of Ms. Huston's employment with Hy-Vee, Ms. Huston accepted a part-time paid position with Louisa County. After a couple of weeks of performing work in both part-time positions, Ms. Huston concluded she could not work in both positions and maintain her grades. Ms. Huston elected to leave the part-time position at Hy-Vee and keep the part-time position with Louisa County because it was within her field of study. Ms. Huston continues in the part-time paid position with Louisa County at this time.

## REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.]

The administrative law judge must follow the plain language of the statute.

The evidence establishes that Ms. Huston did indeed voluntarily quit the part-time employment because she had accepted new part-time employment with Louisa County. The negative impact of holding two jobs while finishing academic studies was a consideration in the quit, but the quit was ultimately based on the decision to accept and continue in the new employment. The quit from Hy-Vee was without good cause attributable to that employer. Hy-Vee's account will not be charged for benefits paid to Ms. Huston. The voluntary quit does not disqualify Ms. Huston for unemployment insurance benefits. Ms. Huston is eligible for benefits, provided she meets all other eligibility requirements.

The evidence raises the issue of whether Ms. Huston has met the work availability requirements of Iowa Code section 96.4(3) since she established her claim for benefits, in light of her voluntary separation from one part-time employment to accept another and the fact that she continues in the new part-time employment. This matter will be remanded to the Claims Division for investigation and determination of the availability issue.

## DECISION:

The Agency representative's April 22, 2011, reference 02, decision is modified as follows. The claimant voluntarily quit part-time employment without good cause attributable to the employer, but for the purpose of accepting other employment. The employer's account shall not be charged. The claimant is eligible for benefits, provided she meets all other eligibility requirements.

This matter is remanded to the Claims Division for determination of whether the claimant has met the availability requirements of Iowa Code section 96.4(3) since she established her claim for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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