

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA J MISKIMINS

Claimant

APPEAL NO. 09A-UI-07007-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE

Employer

OC: 04/05/09

Claimant: Appellant (1)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The claimant, Barbara Miskimins, filed an appeal from a decision dated April 30, 2009, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on June 22, 2009. The employer, Hy-Vee, participated by Manager of Perishables Gail Narber, Assistant Manager Melinda Hammerlink, Manager of Store Operations Stacie Nichols and was represented by Unemployment Insurance Services in the person of Tim Speir.

The claimant provided a telephone number and was contacted for the hearing. She was using a cell phone and was advised prior to the start of the hearing if she lost the connection on her cell phone during the hearing the administrative law judge would not call her back until she called the Appeals Section to indicate her cell phone was working again or she had found another phone to use. Ms. Miskimins lost the connection on her cell phone during the opening statement and did not contact the Appeals Section by the time the record was closed at 9:11 a.m. and did not participate.

ISSUE:

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

FINDINGS OF FACT:

Barbara Miskimins was employed by Hy-Vee from August 21, 2008 until March 29, 2009 as a part-time cashier. At the time of hire she attended orientation and received a copy of the employee handbook. The employer's attendance policy requires any employee who is not able to come to work for a scheduled shift to notify a member of upper management prior to the start of the shift. The policy further states three days of no-call/no-show to work are considered a voluntary quit.

The claimant's last day of work was March 20, 2009. She was no-call/no-show for her next seven scheduled shifts on March 21, 22, 23, 26, 27, 28 and 29, 2009. The employer considered her a voluntary quit.

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(4) 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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The claimant was no-call/no-show to work for at least three scheduled shifts in violation of a known company rule. She did not participate in the hearing to provide any explanation for her absences or her failure to call and notify the employer of the reason for her absence. Under the provisions of the above Administrative Code section, this is a quit work without good cause attributable to the employer and the claimant is disqualified.

DECISION:

The representative's decision of April 30, 2009, reference 01, is affirmed. Barbara Miskimins is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css