

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARRIE EDGAR
Claimant

APPEAL NO. 07A-UI-08450-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/22/07 R: 02
Claimant: Respondent (2)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.3(7) – Recovery of Overpayment

STATEMENT OF THE CASE:

Hy-Vee, Inc., filed a timely appeal from the August 27, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on October 1, 2007. Claimant Carrie Edgar participated and presented additional testimony through Christine Defoor. David Williams of TALX UC eXpress represented the employer and presented testimony through Assistant Store Manager Jennifer McIntire, Assistant Manager Phil Hunt and Assistant Night Stock Manager Frank Watson. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibit A into evidence.

ISSUES:

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

Whether the claimant quit in response to intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment.

Whether the claimant was overpaid benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Carrie Edgar was employed by Hy-Vee from May 6, 2007 until July 11, 2007, when she voluntarily quit by departing the workplace during her shift. On June 25, Assistant Manager Jennifer McIntire promoted Ms. Edgar from part-time cashier to a full-time night stock position. Ms. Edgar's supervisors in the new position were Night Stock Manager Phil Hunt and Assistant Night Stock Manager Frank Watson. Ms. McIntire introduced Ms. Edgar to Mr. Hunt and Mr. Watson at the time the promotion took effect, advised Ms. Edgar of their positions within store's hierarchy, and advised Ms. Edgar that these two supervisors would train her for her new position. Ms. Edgar's overnight position continued to involve some cashiering responsibilities.

On June 25, Mr. Hunt attempted to provide Ms. Edgar guidance regarding what to do if she was confronted with an out-of-control customer during the overnight shift. Mr. Hunt instructed

Ms. Edgar not to attempt to deal with the situation by herself, but to summon Mr. Hunt or Mr. Watson to assist her in dealing the customer. Ms. Edgar misinterpreted this guidance as a comment on her gender and erroneously concluded that Mr. Hunt thought less of her because she was a woman.

Ms. Edgar did not respond well to Mr. Hunt's attempts and Mr. Watson's attempts to train her on the night stock position. On July 4, Ms. Edgar complained to Ms. McIntire that Mr. Hunt and Mr. Watson were being hard on her. Ms. McIntire addressed the matter with Mr. Hunt and Mr. Watson separately and concluded that both men were simply performing their assigned supervisory duties, were in no way mistreating Ms. Edgar, and were no way treating Ms. Edgar different from any other employee. Mr. Hunt and Mr. Watson continued to encounter problems in their attempts to increase the quality and quantity of Ms. Edgar's work to that of other night stock crew members. Mr. Watson asked Ms. McIntire to come in early on July 10 to discuss and observe Ms. Edgar's work performance via the employer's surveillance cameras.

On July 10, Ms. McIntire went to the store at 5:00 a.m. and observed Ms. Edgar's work. Ms. McIntire reviewed video surveillance that indicated Ms. Edgar would not appropriately perform the aisle "facing" work for the lower shelf. This work required Ms. Edgar to sit on the floor and Ms. Edgar refused to sit on the floor. The video surveillance also indicated that Ms. Edgar would not respond to the front of the store as needed and directed. After speaking with Mr. Watson and reviewing the surveillance record, Ms. McIntire met with Ms. Edgar for the purpose of issuing a verbal warning for poor work performance. Ms. McIntire also made it clear to Ms. Edgar that Ms. Edgar had the option of returning to the daytime cashiering position if the night stocking position was not a good fit.

On July 11, Mr. Hunt summoned Ms. Edgar to a conference to discuss her unsatisfactory work performance. Mr. Watson was also present. Mr. Hunt had been off work for several days and noted problems with Ms. Edgar's work performance upon his return. Mr. Hunt wanted to make certain Ms. Edgar clearly understood her duties and the employer's expectations. Mr. Hunt also wanted to make certain Ms. Edgar understand that her duties on nights when there was a freight delivery differed from her duties on nights when there was not a freight delivery. Ms. Edgar perceived the counseling session as an attack. Ms. Edgar again misperceived Mr. Hunt's constructive criticism of her work as a comment and attack on her gender. After the meeting, Mr. Hunt and Mr. Watson thought Ms. Edgar had returned to her duties. Ms. Edgar had in fact walked off the job. Mr. Hunt contacted Ms. Edgar by telephone and encouraged her to speak with Ms. McIntire regarding her concerns. Ms. Edgar made one attempt to contact Ms. McIntire and learned that Ms. McIntire was not at the workplace. Ms. Edgar did not further pursue contact with Ms. McIntire or pursue contact with another manager. Ms. Edgar did not return to the employment.

Contrary to Ms. Edgar's perception of Mr. Hunt and Mr. Watson, neither was opposed to having females on the night stocking crew. Ms. McIntire did the hiring for the night stock crew and had hired other female employees who had successfully performed the night stock duties under the supervision of Mr. Hunt and Mr. Watson without incident. One such female employee commenced her employment one week before Ms. Edgar quit and continued in the employment beyond Ms. Edgar's separation date.

Ms. Edgar established a claim for unemployment insurance benefits that was effective July 22, 2007 and has received benefits totaling \$1,870.00.

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

Workforce Development rule 871 IAC 24.25 provides that the following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- 24.25(21) The claimant left because of dissatisfaction with the work environment.
- 24.25(22) The claimant left because of a personality conflict with the supervisor.
- 24.25(27) The claimant left rather than perform the assigned work as instructed.
- 24.25(28) The claimant left after being reprimanded.

The greater weight of the evidence in the record indicates that Ms. Edgar voluntarily quit the employment after being reprimanded by Ms. McIntire on July 10 and after being reprimanded by Mr. Hunt on July 11. The greater weight of the evidence indicates that Ms. Edgar was unwilling to take appropriate instruction from Mr. Hunt and Mr. Watson and unwilling to perform her duties as instructed. The greater weight of the evidence indicates that Ms. Edgar had a personality conflict with Mr. Hunt and Mr. Watson. The greater weight of the evidence fails to support Ms. Edgar's assertion that Mr. Hunt and/or Mr. Watson directed any discriminatory comments or conduct at Ms. Edgar. The greater weight of the evidence in the record fails to establish intolerable and/or detrimental working conditions that would have prompted a reasonable person to quit the employment.

The administrative law judge carefully listened to and considered the testimony of all of the witnesses who testified at the hearing. The administrative law judge found much of Ms. Edgar's testimony, and Ms. Defoor's testimony, implausible. The implausible testimony included Ms. Edgar's assertion that she had no idea that Mr. Hunt and Mr. Watson were night stocking supervisors. The implausible testimony included Ms. Defoor's assertion that Mr. Hunt and Mr. Watson routinely and off-handedly made discriminatory remarks to customers at the front of the store months before Ms. Edgar commenced her employment. The implausible testimony also included Ms. Edgar's assertion that she called the store daily over the course of several days in an attempt to speak with Ms. McIntire, but that Ms. McIntire, a full-time Assistant

Manager, was not at the store on any of those days. The administrative law judge concluded that the testimony presented by the employer was credible and that the testimony presented by the claimant was not credible.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Edgar voluntarily quit the employment without good cause attributable to the employer. Accordingly, Ms. Edgar is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Edgar.

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.

Because Ms. Edgar has been deemed ineligible for the benefits she received, those benefits constitute an overpayment that Ms. Edgar must repay to Iowa Workforce Development. Ms. Edgar is overpaid \$1,870.00.

DECISION:

The Agency representatives August 27, 2007, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged. The claimant is overpaid \$1,870.00.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs