

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BHADRESH PATEL
Claimant

HY-VEE INC.
Employer

APPEAL 20A-UI-05723-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Appellant (2R)

Iowa Code section 96.19(38) – Total, Partial, or Temporary Unemployment
Iowa Code section 96.4(3) – Able to and Available for Work
Iowa Administrative Code rule 871-24.23(10) – Voluntary Period of Unemployment While on
Leave of Absence

STATEMENT OF THE CASE:

The claimant, Bhadresh Patel, appealed the June 2, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Patel voluntarily quit his job with Hy-Vee Inc. (Hy-Vee) without good cause attributable to the employer. The agency properly notified the parties of the hearing.

The undersigned presided over a telephone hearing on July 8, 2020. Patel participated personally and testified. His son-in-law Naresh Saripadya sat in on the hearing. Hy-Vee participated through Marlene Sarpin, the employer's representative. Kari Nelson testified as a witness for Hy-Vee. Arti Mapara served as the interpreter.

ISSUES:

Was Patel's separation from employment with Hy-Vee a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Is Patel able to and available for work?

Was Patel on an approved leave of absence?

Was Patel overpaid benefits?

Is Patel eligible for Federal Pandemic Unemployment Compensation (FPUC) under the CARES Act?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Hy-Vee hired Patel on January 14, 2015. Patel works part time for Hy-Vee as a clerk. At first, Patel was a salad bar clerk and his job title changed to produce clerk after Hy-Vee made the salad bar part of its produce department.

Patel requested a leave of absence to take a trip. Hy-Vee granted the leave of absence. Patel's leave began on January 20, 2020.

Patel returned from his trip in April. He notified Hy-Vee, via his supervisor, that he could return to work on March 17, 2020. Hy-Vee informed Patel that the salad bar was closed due to COVID-19 and they would contact him in April. According to Nelson's testimony, Hy-Vee had other work available in the store at the time, but the evidence shows Hy-Vee did not offer such work to Patel at the time.

Patel works a second part-time job at CDS. On April 4, 2020, CDS closed temporarily because of COVID-19. CDS laid Patel off effective April 5, 2020.

Patel returned to work for Hy-Vee during the first week of April. On April 14, 2020, Patel had a doctor's appointment. His doctor advised him that, because of his health issues and age, he was at high risk from serious illness or death from COVID-19 and that he should quarantine. Patel notified Hy-Vee and requested a leave of absence, which Hy-Vee granted.

In the last week of May, Patel contacted Hy-Vee about returning to work. Hy-Vee informed him that the salad bar was still closed. Hy-Vee informed Patel it would contact him on June 1. Hy-Vee then scheduled Patel to return to work on June 6. Patel continued to work when Hy-Vee would schedule him.

Despite Patel working for Hy-Vee in early August and request to return to work in the last week of May, Hy-Vee's records indicate he was on a continuous leave of absence from January 20, 2020, through June 4, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Patel's separation from the employment was without good cause attributable to Hy-Vee under Iowa law.

Iowa Code section 96.5(1) states an individual is disqualified for benefits if the individual left work voluntarily without good cause attributable to the individual's employer. Iowa Administrative Code rule 24.25 states:

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.

For a voluntary quit to have occurred, the claimant must have:

- 1) Intended to leave her employment; and

- 2) Acted to carry out that intent. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

The evidence shows Patel did not intend to quit and took no action to carry out that intent. Moreover, Hy-Vee never considered Patel to have quit his job. Consequently, the evidence does not support the conclusion that Patel quit. Rather, it is undisputed between the parties that Patel requested a leave of absence and Hy-Vee agreed to the request.

Under Iowa Code section 96.4(3), a claimant must be able to, available for, and earnestly and actively seeking work in order to be eligible for benefits. Iowa Administrative Code rule 871-24.22(2)(j) states:

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Further, rule 871-24.23(10) provides that a claimant is disqualified from benefits for being unavailable for work if “the claimant requested and was granted a leave of absence” because “such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.”

Here, Hy-Vee’s records indicate Patel’s leave of absence was continuous, from January 20, 2020, through June 4, 2020. And while Hy-Vee may have considered Patel on a leave of absence, Patel credibly testified that he asked to return to work on March 17, 2020, returned to work for a brief period before requesting a new leave of absence because of COVID-19 on or about April 14, 2020, and then sought to return to work from this second leave of absence in the last week of May. Hy-Vee was able to accommodate this request on June 6, 2020.

The evidence shows that Patel actually took two leaves of absence that cover the following time periods:

- 1) January 20, 2020, through March 17, 2020; and
- 2) April 14, 2020, through May 23, 2020.

Patel is not eligible for benefits during the above time periods because he was on agreed-upon leaves of absence. However, Patel is eligible for benefits from March 18, 2020, through April 13, 2020, and from May 24, 2020, through June 5, 2020, *provided he is otherwise eligible under the law*.

Patel’s entitlement to benefits during these times periods will likely be impacted by his apparent layoff from CDS, his other part-time employer. There is no indication that Patel requested or was granted a leave of absence from CDS or that he would have requested leave. Rather, it appears CDS put Patel on layoff. Moreover, there is no indication that the nature of his work at CDS would have necessitated a leave of absence in the same way his work at Hy-Vee did. It is

possible that Patel might have been able to work at CDS while on a doctor-prescribed leave of absence from Hy-Vee had CDS not put him on layoff.

A determination of whether Patel was overpaid benefits cannot be made without determining his entitlement to benefits during the period of time he was not working for CDS. Therefore, this claim is remanded to the Benefits Bureau for a determination of Patel's entitlement to benefits given his employment situation with CDS and, based on that determination, a decision with respect to whether Patel was overpaid any regular unemployment insurance benefits under state law or FPUC under the CARES Act.

DECISION:

The June 2, 2020 (reference 01) unemployment insurance decision is reversed in part, affirmed in part, and modified in part. The claim is remanded to the Benefits Bureau for a determination of whether Patel is entitled to benefits due to the nature of the period of time during which he was not working for CDS, his other part-time employer and whether Patel was overpaid benefits based on that determination.

A handwritten signature in black ink, appearing to read "Ben Humphrey", with a long horizontal line extending to the right.

Ben Humphrey
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

bh/scn