

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGAN D MATEJKA
Claimant

APPEAL NO. 11A-UI-06334-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/10/11
Claimant: Respondent (2)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 3, 2011, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 8, 2011. Claimant Megan Matejka did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Alice Rose Thatch of Corporate Cost Control represented the employer and presented testimony through Angie Mooney, Manager of Perishables. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Matejka separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Megan Matejka was employed by Hy-Vee as a part-time kitchen clerk from 2008 until April 2, 2011, when she voluntarily quit in connection with a workers' compensation settlement agreement. Ms. Matejka had experienced three injuries in the workplace. The first two involved knee injuries in 2008. The final injury was a cut finger in January 2010. In April 2011, Ms. Matejka entered into a workers' compensation settlement agreement with Hy-Vee whereby she received compensation for her injuries and she agreed to resign from the employment. Ms. Matejka had the assistance of legal counsel during that process. Ms. Matejka was physically able to continue to perform work for Hy-Vee, but elected to enter into the settlement agreement and separate from the employment, rather than continue to work for the employer while she continued to pursue her workers' compensation claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Administrative Code rule 871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The evidence fails to establish a quit in lieu of imminent discharge. The evidence establishes instead a voluntary quit in connection with a workers' compensation agreement.

While there is no Iowa case law on point, other states have addressed the situation of a voluntary quit in the context of a Workers' Compensation settlement. In Edward v. Sentinel Management Co., 611 N.W.2d 366 (Minn. App. 2000), the claimant resigned as part of a workers' comp settlement package. The Minnesota court denied benefits noting that the claimant could have continued working while pursuing his claim. The evidence in the case established that the claimant could still perform his work and was doing so while the negotiations continued. The court found the situation analogous to a person negotiating for early retirement while work was still available. In Larson v. Michigan Employment Sec. Com'n., 140 N.W.2d 777 (Michigan App. 1966), the Michigan court allowed benefits to a severely injured worker who could not perform his former duties and for whom the alternatives were remaining employed with no income or resigning in order to receive income. Iowa administrative law judges follow these two lines of analysis and make similar distinctions.

The evidence in the record establishes that Ms. Matejka continued to be able to perform work for the employer, but voluntarily quit as part of the workers' compensation settlement. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Matejka voluntarily quit the part-time employment without good cause attributable to the employer.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times her weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

Workforce Development record indicate that Hy-Vee was Ms. Matejka's sole base period employer. Thus, there are no other wages upon which benefits might be based. Ms. Matejka 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. Matejka.

Workforce Development records indicate that no benefits have been disbursed to Ms. Matejka in connection with the claim that was effective April 10, 2011. Thus, there is no need for a remand to address overpayment of benefits,.

DECISION:

The Agency representatives May 3, 2011, 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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