

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT A AKUOCWEL
Claimant

APPEAL NO. 08A-UI-07002-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/22/08 R: 02
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Robert A. Akuocwel (claimant) appealed a representative's July 25, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Hy-Vee, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 18, 2008. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Tim Speir of Unemployment Insurance Services appeared on the employer's behalf and presented testimony from two witnesses, Jim Douglas and Nancy Richardson. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 14, 2006. He worked full time as an overnight stock person in the employer's West Des Moines, Iowa store. His last day of work was the shift that ended on the morning of June 3, 2008.

The claimant's shift was scheduled to end at about 6:00 a.m. However, after having had some problems with the claimant not following instructions to clean up in some of the aisles after stocking, Mr. Douglas, the assistant manager for night stock directed the claimant to do a restroom clean up at approximately 3:30 a.m. When the claimant refused, Mr. Douglas told the claimant he had to go home and that he could not return until he spoke with Ms. Richardson, the human resources manager. Mr. Douglas' intention was that the claimant be suspended for a short time for insubordination, but this needed to be handled directly through Ms. Richardson.

During the day on June 8 the claimant telephoned Ms. Richardson. She informed him that she could not handle the matter on the phone, but that he needed to come and speak with her directly. The claimant was reluctant to do this, and kept trying to get Ms. Richardson to discuss the matter on the phone. Ms. Richardson was busy with other duties at the time, and to get off the phone with the claimant she indicated she would try to call him back later on when she was free. However, she was unable to recall the claimant later on. That evening the claimant attempted to report for his regular work shift at 10:00 p.m. The night manager on duty advised the claimant again that he could not work until he had seen and spoken with Ms. Richardson, and sent him back home. The claimant did not make any further attempt to speak with Ms. Richardson.

REASONING AND CONCLUSIONS OF LAW:

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

The question here is whether the separation was “voluntary” or whether it was the employer’s action or inaction of sending the claimant home and then Ms. Richardson not returning his one phone call which led to the separation and therefore the separation should be treated as a discharge for which the employer would bear the burden to establish it was for misconduct. Iowa Code § 96.6-2; 871 IAC 24.26(21). Rule 871 IAC 24.25 provides that, 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 rule further provides that there are some actions by an employee which are construed as being voluntary quit of the employment, such as leaving rather than doing work as instructed or leaving because of a belief the claimant has been discharged when the claimant was not told that he was discharged. 871 IAC 24.25.

The last communication between the employer and the claimant was on the evening of June 8 when the instruction was repeated to the claimant that he must see and speak with Ms. Richardson before he could return to work; he was not told he was discharged. The claimant chose to take no further action to see Ms. Richardson as he had been instructed; therefore, the separation is considered to be a voluntary quit. The claimant then has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Leaving because a reprimand or other discipline has been given to him is not good cause. 871 IAC 24.25(28). The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The representative’s July 25, 2008 decision (reference 01) is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. As of June 8, 2008,

benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css