

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

SNEZHANA M MISSALL
Claimant

APPEAL NO: 19A-UI-04070-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 04/21/19
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Snezhana M. Missall, filed an appeal from the May 7, 2019, (reference 01) unemployment insurance decision that denied benefits based upon her voluntary separation from employment with Hy-Vee Inc. The parties were properly notified about the hearing. A first telephone hearing was scheduled to be held on June 12, 2019. The claimant notified the Appeals Bureau that she was in a prescheduled doctor's appointment and could not attend the hearing. The hearing was postponed and the claimant was notified the new date/time would be July 5, 2019.

After proper notice, a telephone hearing was held on July 5, 2019. On July 4, 2019, the claimant emailed a written statement to the Appeals Bureau, indicating she could not attend the hearing. Her statement was accepted as her participation and as Claimant Exhibit A. The employer, Hy-Vee Inc., was represented by Trenton Kilpatrick, hearing representative with Corporate Cost Control. Cathy Rubetz, human resources manager, and Brian Hamrick, produce manager, testified. Employer Exhibit 1 was admitted into evidence.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a salad bar clerk and was separated from employment on April 21, 2019, when she quit her employment. Continuing work was available.

As a full-time salad bar clerk, the claimant's schedule was not set, and could vary based upon business needs. The claimant had frequently worked Saturday mornings and in April 2019, was

scheduled for three shifts on Saturday evenings. The claimant worked the first one on April 6, 2019 and was scheduled for two more, which the employer did not make her work and had covered for her. At that time, she told the employer she preferred days due to her daycare. She then quit the employment. Prior to quitting, she had not raised concerns with management about work conditions.

In her written statement, the claimant stated she felt she had to quit the employment because the employer would not respect her availability (Claimant Exhibit A). The claimant had not provided the employer any restriction to Saturday evenings and worked Saturday days. When the employer learned the claimant preferred days, it helped her cover the two remaining shifts for Saturday evenings. The claimant didn't want her hours to change because "they were perfect for my daughter's daycare" (Claimant Exhibit A). She also stated she quit while pregnant because she did not "want the stress to affect the baby girl" (Claimant Exhibit A). When human resources manager, Cathy Rubetz, asked the claimant about her resignation, the claimant only stated she wanted to take some time off. Ms. Rubetz denied knowing the claimant was pregnant at separation and the employer was not provided any medical documentation to support the claimant's decision to quit.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment without good cause attributable to the employer. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.25(18) and Iowa Admin. Code r. 871-24.25(21) provide:

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:

(18) The claimant left because of a dislike of the shift worked.

...

(21) The claimant left because of dissatisfaction with the work environment.

The claimant has the burden of proof to establish he quit with good cause attributable to the employer, according to Iowa law. "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Industrial Relations Commission*, 277 So.2d 827 (Fla. App. 1973).

Ordinarily, "good cause" is derived from the facts of each case keeping in mind the public policy stated in Iowa Code section 96.2. *O'Brien v. EAB*, 494 N.W.2d 660, 662 (Iowa 1993)(citing *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986)). "The term encompasses real circumstances, adequate excuses that will bear the test of reason, just grounds for the action, and always the element of good faith." *Wiese v. Iowa Dep't of Job Serv.*, 389 N.W.2d 676, 680 (Iowa 1986) "[C]ommon sense and prudence must be exercised in evaluating all of the circumstances that lead to an employee's quit in order to attribute the cause for the termination." *Id.*

Based on the evidence presented, the claimant quit the employment due be scheduled for Saturday evening shifts. An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___-___/___-___, Iowa Ct. App. filed ___, 1986). The claimant only worked one Saturday evening shift before quitting. She has failed to establish a good cause reason why she could not work on Saturday evenings or that she took steps to preserve her employment before quitting the employment when she learned she may be scheduled for some Saturday evenings. The evidence presented supports the claimant's availability did not restrict her from Saturday evenings, but rather she preferred to work day shifts.

The claimant also referenced stress on her pregnancy as a reason to sever employment but did not provide medical documentation in support or that a doctor advised her to quit the employment.

Therefore, based upon the evidence presented, the administrative law judge concludes the claimant may have had personally compelling reasons to quit the employment but has failed to establish she quit for good cause attributable to the employer according to Iowa law. Benefits are denied

DECISION:

The May 7, 2019, (reference 01) decision is affirmed. The claimant quit without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn