

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY L KING
Claimant

APPEAL NO. 09A-UI-15980-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**Original Claim: 09/20/09
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 20, 2009, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 30, 2009. The claimant participated. The employer participated by Rusti Subject, assistant manager for store operations. The employer was represented by Tim Spier, who is affiliated with Unemployment Insurance Services. The record consists of the testimony of Larry King and the testimony of Rusti Subject.

ISSUE:

Whether the claimant voluntarily left for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as a part-time clerk in the wine and spirits department of a Hy-Vee store located in Des Moines, Iowa. His date of hire was May 28, 2008. He generally worked nights. The claimant's last day of work was March 9, 2009. He was scheduled to work on March 14, 2009; March 15, 2009; and March 16, 2009. The claimant did not report for work and did not call in to report his absence. The employer had a policy that required employees to call in to a supervisor two hours prior to the start of a shift if the employee was unable to work. The claimant never contacted anyone from the employer after his last day of work on March 9, 2009.

The claimant was hospitalized for three days due to anxiety and depression. He attributed his problems to a fear of coming to work. There had been occasions when a customer had become angry when the claimant asked to see a receipt. The claimant felt threatened by those customers, and was particularly worried that he might be confronted by the customer when he left work and was in the parking lot. The claimant had talked to Rusti Subject about his concern and Mr. Subject offered the claimant a position as a cashier in the main store. The claimant did not accept this offer.

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.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The evidence in this case established that it was the claimant who initiated the separation of employment. The claimant decided to sever the employment relationship because he was afraid of going to work. The claimant encountered rude customers and perceived their comments as threats. The claimant was not concerned while working in the store because he had a way to summon assistance. However, some of the customers made comments to the effect that they knew when he left work and the claimant was worried he would be confronted outside the store. These fears escalated and the claimant decided he no longer wanted to work for the employer.

There was no evidence that the claimant had ever been confronted outside the store or that any of the threats he perceived had been carried out. The employer offered the claimant a job as a cashier in the main store, but the claimant never accepted that offer. Although the claimant felt that he personally could no longer work for the employer, he has not shown that his voluntary quit was for good cause attributable to the employer. Benefits are denied.

DECISION:

The representative's decision dated October 20, 2009, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until 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.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw