

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE SOAT
Claimant

APPEAL NO. 08A-UI-11087-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07/20/08 R: 01
Claimant: Respondent (2/R)

Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed an unemployment insurance decision dated November 19, 2008, reference 02, which held that Jamie Soat (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 10, 2008. The claimant participated in the hearing. The employer participated through Scott Walters, Store Manager; Jim Banasik, Manager of Store Operations; and employer representative Tim Speir. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time cake decorator in the Estherville, Iowa store from October 29, 2007 through June 13, 2008 when he voluntarily quit. The Store Manager Scott Walters placed the claimant in the kitchen manager position on a trial basis on May 8, 2008. The claimant was made aware that if it did not work out, he would go back to his hourly position. A kitchen manager is required to work a minimum of nine hours daily and the claimant was sent to Spirit Lake for training. The claimant left early several times and the Spirit Lake store manager subsequently contacted Mr. Walters to report that the claimant was only working five hours a day. The claimant also walked out during inventory and left the assistant manager to complete it. There were other complaints from kitchen employees regarding the claimant's performance as a manager. Consequently, Mr. Walters removed the claimant from management on June 5, 2008 and placed him back in his hourly position.

He was over one hour late for work on June 10, 2008 and left work early the following day without pulling the donuts. When someone said something to him about it he said, "I don't give a shit. I'm not staying to pull donuts." Mr. Walters prepared a disciplinary warning for the claimant and discussed it with him on June 13, 2008. The warning advised the claimant that he needed to finish his work before leaving, have a positive attitude while at work and report to work on time. The warning stated that failure to comply with the directives could lead up to termination. The claimant refused to sign the disciplinary warning. He later left for lunch and never returned.

The claimant filed a claim for unemployment insurance benefits effective July 20, 2008 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

Although the claimant contends he was fired, the evidence confirms that he voluntarily quit. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant demonstrated his intent to quit and acted to carry out that intent by leaving for lunch on June 13, 2008 after being reprimanded and failing to return. The law presumes it is a quit without good cause attributable to the employer when an employee leaves after being reprimanded. 871 IAC 24.25(28).

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied that burden. Benefits are denied.

Iowa Code § 96.3(7) provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The overpayment recovery law was updated in 2008. See Iowa Code § 96.3(7)(b). Under the revised law, a claimant will not be required to repay an overpayment of benefits if all of the following factors are met. First, the prior award of benefits must have been made in connection with a decision regarding the claimant's separation from a particular employment. Second, the claimant must not have engaged in fraud or willful misrepresentation to obtain the benefits or in connection with the Agency's initial decision to award benefits. Third, the employer must not have participated at the initial fact-finding proceeding that resulted in the initial decision to award benefits. If Workforce Development determines there has been an overpayment of benefits, the employer will not be charged for the benefits, regardless of whether the claimant is required to repay the benefits.

Because the claimant has been deemed ineligible for benefits, any benefits the claimant has received could constitute an overpayment. Accordingly, the administrative law judge will remand the matter to the Claims Division for determination of whether there has been an overpayment, the amount of the overpayment, and whether the claimant will have to repay the benefits.

DECISION:

The unemployment insurance decision dated November 19, 2008, reference 02, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css