

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFF M WALTE**  
Claimant

**APPEAL NO: 14A-UI-04716-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 04/06/14**

**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed a representative's April 29, 2014 decision (reference 01) that concluded Jeff M. Walte (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and register a telephone number into the system at which he could be reached for the hearing and did not participate in the hearing. Ajah Anderson of Corporate Cost Control appeared on the employer's behalf and presented testimony from four witnesses, Andrew Cochran, Tara Brunenn, Ryan Thompson, and Traci Roth. 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.

**ISSUES:**

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?

Was the claimant overpaid unemployment insurance benefits, and if so, is that overpayment subject to recovery based upon whether the employer participated in the fact-finding interview?

**OUTCOME:**

Reversed. Benefits denied. Overpayment subject to recovery.

**FINDINGS OF FACT:**

The claimant started working for the employer on May 19, 2007. He worked part time as a grocery checker at the employer's Keokuk, Iowa store. His last day of work was February 4, 2014.

On February 4 the claimant was scheduled to work a shift from 4:00 p.m. to 10:00 p.m. Shortly after he started the shift the employer began receiving complaints about the claimant's behavior appeared to be "off." Thompson, perishables manager, and Roth, general merchandise manager, intervened. The managers observed that the claimant's eyes were glassy and he appeared to be tripping, causing some question as to whether he was under the influence of alcohol or some substance, although there was no odor of alcohol. Because of this behavior, the managers sent the claimant home at 4:57 p.m. with an instruction to come in on February 5 to talk to the store director, Cochran.

The employer had concern that the claimant was under the influence because there had been a similar incident for which he was warned on November 21, 2013, and again on January 24, 2014, when he also displayed aberrant behavior, that he "can't come in when you feel that way."

The claimant did not come in to speak to Cochran on February 5. He was not scheduled to work again until a 5:00 p.m. shift on February 7. At about 11:00 a.m. on February 7 he called Cochran, who told the claimant he needed to come in so they could discuss what had happened on February 4. The claimant came in at about 2:00 p.m., but before Cochran could question him about what had happened on February 4, the claimant asked if he could quit. Cochran told him that was up to him, and the claimant proceeded to quit and leave. At that point Cochran had not made a decision as to whether the claimant would be discharged or not.

The claimant established a claim for unemployment insurance benefits effective April 6, 2014. A fact-finding interview was held with a Claims representative on April 28, 2014. The employer, through Tara Brunenn, human resources manager, participated directly in the fact-finding interview. The claimant has received unemployment insurance benefits after the separation in the amount of \$562.00.

#### **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. Rule 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 claimant asserts that his separation was not "voluntary" as he had not desired to end the employment; he argues that since the employer had emphasized that an employee could be discharged for being a no-call, no-show that 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; Rule 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 claimant quit presumably because he believed he was going to be discharged, even though the employer had not decided or told him that his employment had ended. 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. Quitting because of a belief that the claimant was going to be discharged even though no decision to that effect had been made or communicated is not good cause for quitting. 871 IAC 24.25(33). The claimant has not satisfied his burden. Benefits are denied.<sup>1</sup>

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code § 96.3-7-a,--b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits. Because the employer participated in the fact-finding interview, the claimant is required to repay the overpayment and the employer will not be charged for benefits paid.

**DECISION:**

The representative's April 29, 2014 decision (reference 01) is reversed. The claimant voluntarily quit without good cause attributable to the employer. The claimant is disqualified from receiving unemployment insurance benefits as of February 4, 2014. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is then otherwise eligible. The employer's account is not subject to charge. The claimant is overpaid \$562.00, which is subject to recovery.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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<sup>1</sup> Even if the separation was treated as a discharge, the result would be the same. "[A] person is 'under the influence' when the consumption of alcohol affects the person's reasoning or mental ability, impairs a person's judgment, visibly excites a person's emotions, or causes a person to lose control of bodily actions." See, *State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004). The employer could reasonably conclude that the claimant was under the influence on February 4, 2014. The claimant's reporting to work under the influence shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Treated as a discharge, the employer discharged the claimant for reasons amounting to work-connected misconduct.