

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TENESHA R BIRDEN
Claimant

HY VEE INC
Employer

APPEAL NO. 22R-UI-01923-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.25(4) - Absent Three Days with no Notice
Iowa Admin. Code r. 871-25(20) - VQ - Compelling Person Reasons > 10 days
Iowa Code § 96.4(3) - Able and Available/Work Search

STATEMENT OF THE CASE:

Tenesha Birden, claimant/appellant, appealed a representative's August 13, 2021, decision (reference 01) that concluded benefits were denied as claimant voluntarily quit 02/28/21 having no called no showed for three consecutive workdays. Administrative Law Judge Hamilton issued a decision on September 28, 2021, in 21A-UI-17242, that kept the representative's decision in effect as appellant was in default and the appeal was dismissed. A decision of remand was issued by the Employment Appeal Board on December 21, 2021, not vacating the decision, the decision remains in force, directing a hearing with notice be held. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 11, 2022, at 10AM. Claimant participated. The employer, Hy-Vee, Inc. participated through Barbara Buss, party representative, and Raynesha Haywood, perishables manager. Judicial notice of the administrative file and the contents therein was taken.

ISSUES:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?
Is Claimant able to and available for work?

FINDINGS OF FACT:

Claimant was a part-time stocker for employer. Her first day worked was December 2, 2020. Claimant last worked on February 1, 2021, and the next dates she was scheduled were March 2, 4, and 6, 2021. Claimant is not scheduled on Mondays, Wednesdays, and Fridays. Claimant was a no call/no show for March 2, 4 and 6, 2021. Employer has an employee handbook and claimant was provided a copy when she started employment. Employer has a policy of three consecutive no calls/no shows is deemed a voluntary quit.

Claimant testifies she was hospitalized March 2-8, 2021, and can provide documentation if needed. Claimant states her husband told her that on some unknown date, Gayle Greer, human resource manager of employer called claimant's cell phone, while claimant was in the hospital, and the husband advised employer of what was going on. Claimant did not have her husband participate in the hearing, nor does she have any independent recollection of this call. Hy-Vee testified if the call took place, there would be documentation of it and there is no documentation of any call or notification that claimant was hospitalized.

Employer treated her three no call/no shows as a voluntary quit, dating it effective her last date worked, February 28, 2021. Claimant made no attempt to reach out to Hy-Vee until September 9, 2021, taking no effort to explain what happened, to see if since she was hospitalized could not be fired and keep her job. The September 9 contact was claimant e-mailing employer asking them to contact her, which the employer reached out to claimant and got no response. Being released March 8, 2021, to September 9, 2021 is 185 days later.

Claimant testified that she was hospitalized March 2-8, 2021, and again September 27-29, 2021, was sick and could not work January 14-24, 2021. Furthermore, claimant believes due to her illness that caused the two hospitalizations, she is limited to part-time work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily quit work.

Iowa Admin. Code r. 871-24.25(4), (20) provides:

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:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "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. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant failed to call in and failed to show up for work on three consecutive workdays, March 2, 4, and 6, 2021. Claimant asserts she was hospitalized and could not call into work, but that her

husband received a call from the employer and advised them of what was taking place. Claimant has no first hand knowledge of the call, only what she says her husband told her and she did not have her husband participate in the hearing. Employer states the call never happened, as if it did, it would be documented and there is no documentation. Employer further states that after employer's last day of February 28, 2021, the next they heard from claimant was an e-mail dated September 9, 2021, where claimant requested Hy-Vee contact her. Employer reached out to claimant and got no response. This is a window of 185 days.

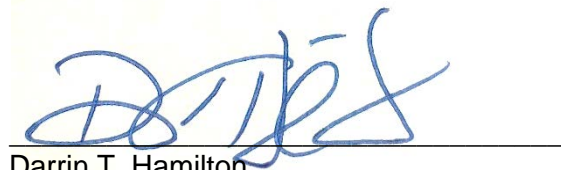
There was no conversation between employer and claimant's husband. While claimant did not call while hospitalized, she did not have her husband call. Claimant made no effort to contact the employer until 185 days after her release from the hospital. She no called no showed three consecutive workdays and while she didn't have the ability to contact the employer, her husband could have, but did not. Furthermore, claimant provided no rationale as to why there was no contact for 185 days thereafter.

Additionally, or alternatively, claimant had compelling reasons personal reasons to leave (her hospitalization from March 2-8, 2021), however, the period of absence exceeded 10 working days. Claimant is scheduled Tuesdays, Thursdays and Saturdays and did not have any contact with the employer for just over 27 weeks (September 9, 2021), approximately 82 working days. Ten working days happened on March 23 and the eleventh working day would have been March 25, 2021.

Claimant voluntary quit without good cause attributable to the employer.

DECISION:

The representative's August 13, 2021, decision (reference 01) of claimant voluntarily quitting is **AFFIRMED**. 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. Remaining issue of able and available to work are addressed in the findings of fact, but with the decision affirmed, this issue is moot.



Darrin T. Hamilton
Administrative Law Judge

March 3, 2022
Decision Dated and Mailed

dh/scn