

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANITA BEDWELL
Claimant

APPEAL NO: 11A-UI-03149-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/16/11
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 March 4, 2011, reference 01, which held that Anita Bedwell (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 April 19, 2011. The claimant participated in the hearing. The employer participated through Collin Venenga, Store Director; David Lambert, Human Resource Manager; Nikki Drobny, Floral Manager; and Alice Thatch, Employer Representative. Employer's Exhibits One through Five were 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 her 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 design clerk in the floral department from January 1, 2006 through January 7, 2011. She had previously worked for Hy-Vee but then worked for Floral Distributors of Iowa before then returning to Hy-Vee. The claimant's last day of work was November 26, 2010 and she called Nikki Drobny, Floral Manager on November 27, 2010 at 5:41 a.m. to report she was not going to work due to illness. The claimant called Ms. Drobny again on November 29, 2010 at 5:52 a.m. but was only able to leave a message. Ms. Drobny returned the claimant's call at 6:39 a.m. and the claimant told her that she was ending her marriage and moving to Iowa City effective immediately. The claimant said she would not be working her scheduled shifts and that she had spent the weekend moving, not ill as she previously stated. The claimant was interested in seeking a transfer to Iowa City and asked if she was eligible for an unpaid leave of absence. Ms. Drobny directed the claimant to human resources.

Human Resources Manager David Lambert had the claimant come to fill out paperwork for the leave of absence. He asked the claimant why she needed the leave and she told him she was having domestic issues and needed to move away. She thought she would move to Iowa City or Cedar Rapids. Mr. Lambert told the claimant he would give her one week of vacation and that she had a month to find a job. At the end of the month, he would pay out the rest of her vacation and she would be done with the company. The claimant filled out the leave of absence paperwork on November 30, 2010 which granted her non-paid time off from December 6, 2010 through January 7, 2011.

The claimant sent the employer an email on December 13, 2010 and stated, "I am currently back in Marshalltown trying to figure out where to settle as well as many other variables. I was just wondering if the door was still open for me to return as at least a regular time employee at the flower shop? I know I have asked for a lot from you here. Please think on this and let me know." She then advised she still had her cell phone and could be reached at that number. Store Director Collin Venenga sent the claimant an email on December 16, 2010 and advised her that it was believed she had left the store and moved so the employer was in the middle of conducting interviews for her position. He also stated that her vacation would be paid out at the end of her leave and that if the situation changed, they would contact her.

The claimant replied with an email on December 20, 2010 stating that she did not resign in any way and asked for a leave of absence due to marital problems. She reiterated that she did not want to terminate her employment and asked the employer to reconsider. Mr. Venenga responded on that same day and advised her that she left employment by telling the employer she was moving to Iowa City and the employer relied on those statements. The claimant never discussed any other options and the employer never told her that her job would still be available if she chose to return. Her resignation had been accepted and she no longer had a job.

The claimant filed a claim for unemployment insurance benefits effective January 16, 2011 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 her to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if she voluntarily quit without good cause attributable to the employer or if the employer discharged her for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

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 contends she never intended to quit, she never submitted a resignation notice to quit and she never quit. However, her telephone call to her manager on November 29, 2010 tells a different story and both her conversations with the floral manager and the human resources manager confirm that the claimant was quitting and moving away.

In the hearing, the claimant denied that she told Ms. Drobny that she was moving to Iowa City but her email dated December 13, 2010 states, "I am currently *back* in Marshalltown" which indicates she was away from Marshalltown which is where she lived when she worked for the employer herein. (emphasis added). This supports Ms. Drobny's testimony. The claimant's email further states, "I was just wondering if the door was still open for me to return...." If the claimant herself did not believe she had severed ties with the employer, it would not make any

sense for her to word her email in this manner. Although it appears the claimant's initial statements to the employer were impulsive and she subsequently changed her mind, that does not change the fact that the employer relied on those statements and was conducting interviews for her replacement. The Iowa Court of Appeals considers it a voluntary quit when a claimant gives notice of resignation which is accepted by the employer, even though the claimant subsequently attempts to withdraw the resignation. *Langley v. EAB*, 490 N.W.2d 300 (Iowa App. 1992). The claimant would still be working but for her statements and actions demonstrating that she was going to quit. The employer was happy with the claimant and had no reason to terminate her; it should not now be penalized due to the claimant's impulsivity.

It is the claimant's burden to prove that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. She has not satisfied that burden and 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 March 4, 2011, reference 01, is reversed. The claimant voluntarily left work without good cause attributable to the employer. Benefits are withheld until she has worked in and has been paid wages for insured work equal to ten times her weekly benefit amount, provided she 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/pjs