IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JENNIFER J KEADY
Claimant

HY-VEE INC
Employer

APPEAL NO. 11A-UI-05884-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/03/11
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jennifer Keady filed a timely appeal from the April 27, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 14, 2011. Ms. Keady participated. Alice Rose Thatch of Corporate Cost Control represented the employer and presented testimony through Susie Sundholm, Kim Shaffer, Jim Scott and Kathy Krieger. Exhibits One through Four, Six and Seven were received into evidence.

ISSUE:

Whether the claimant's voluntary quit was for good caused attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jennifer Keady was employed by Hy-Vee as a full-time meat clerk from 2006 and last performed work for the employer on February 13, 2011. Ms. Keady was next scheduled to work on Tuesday, February 15, but called in sick. Ms. Keady was not actually sick. Ms. Keady was then absent from work without notifying the employer on February 17, 18, 20, 22, 2011 in violation of the employer's attendance policy. The policy required that Ms. Keady notify the employer two hours before the scheduled start of her shift if she needed to be absent. Ms. Keady had intended to quit the employment and intended to communicate this by ceasing to appear for work. After Ms. Keady was gone on February 17 and failed to answer or return the employer's phone calls to her, the employer had a friend of Ms. Keady's, another employee, telephone her. Ms. Keady told the friend she was not working at Hy-Vee any more. After Ms. Keady failed to appeal for the additional shifts, the employer concluded that she had voluntarily quit by abandoning the employment.

On February 24, Ms. Keady contacted the store and requested to speak with Store Director Susie Sundholm. Ms. Keady asked to come in and discuss her employment. Ms. Keady asked if there was any way she could get her job back. The employer declined to allow Ms. Keady to return to the employment.

After Ms. Sundholm told Ms. Keady she could not have her job back, Ms. Keady asserted, for the first time, that her immediate supervisor, Meat Department Manager John Charles, had sexually harassed her and that that was the reason she ceased appearing for work. Ms. Keady alleged that the sexual harassment occurred daily and that the last incident had taken place in the cooler during her shift on February 12. Ms. Keady also asserted that she had previously told coworkers about the sexual harassment. The employer thoroughly investigated the claim of sexual harassment and found there was no basis for it. Ms. Keady had first spoken to coworkers about the alleged harassment on February 21, after she had been absent three days without notifying the employer. The employer reviewed video surveillance from the meat department that showed Ms. Keady and Mr. Charles enjoying a laugh together outside the cooler immediately after exiting the cooler on February 12, right after the moment Ms. Keady later alleged had been the last instance of sexual harassment.

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.

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See Hy-Vee v. EAB, 710 N.W.2d (Iowa 2005).

When a worker is absent three days without notifying the employer in violation of the employer's policy, the worker is presumed to have voluntarily quit without good cause attributable to the employer. See 871 IAC 24.25(4).

The weight of the evidence in the record establishes that Ms. Keady voluntarily quit the employment without good cause attributable to the employer by being absent three or more days without notifying the employer in violation of the employer's attendance policy. The administrative law judge, like the employer, took seriously Ms. Keady's allegation of sexual harassment. While Mr. Charles was conspicuously absent from the hearing, the weight of the evidence establishes that Ms. Keady fabricated the allegation of sexual harassment only as a means to get her employment back after she had voluntarily quit for personal reasons. The fabrication included providing misleading information to the employer about information Ms. Keady had allegedly given to coworkers and the timing of such information.

Ms. Keady is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged for benefits paid to Ms. Keady.

DECISION:

The Agency representative's April 27, 2011, reference 01, decision is affirmed. The claimant voluntarily quit the employment without good cause attributable to the employer. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The employer's account shall not be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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