

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELANIE F MULVANIA**  
Claimant

**APPEAL NO. 08A-UI-00823-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 12/30/07 R: 02**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Hy-Vee, Inc. (employer) appealed a representative's January 18, 2008 decision (reference 01) that concluded Melanie F. Mulvania (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant voluntarily quit her employment for reasons that qualified her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 25, 2008. The claimant participated in the hearing with her attorney, Kelly Meier. Shelley Mackel, Attorney at L, observed. Art Neuhedel, Attorney at Law, appeared on the employer's behalf. Mark Lammers, the store director, testified on the employer's behalf. Kathy Linster observed the hearing. 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.

**ISSUES:**

Did the claimant voluntarily quit her employment for reasons that qualify her to receive unemployment insurance benefits?

Has the claimant been overpaid any unemployment insurance benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer on October 30, 2006. The claimant worked as a full-time floral designer. Linster supervised the claimant.

During her employment, the claimant usually did not have problems getting along with Linster. However, there were times Linster was difficult to work under because she gave conflicting information to the claimant and other employees. When Linster was stressed, Linster treated the claimant and others in a way that created a lot of turmoil at work. The claimant described Linster's personality as Dr. Jekyll and Mr. Hyde.

The claimant talked to Lammers two times about the Linster. The first time was February 14, 2006. On this day Linster was extremely stressed and took her frustrations and anxiety out on the employees. The claimant asked Lammers to send Linster home so she and other employees would not walk out. In October 2007, the claimant talked to Lammers and asked him for clarification about the employer's policy regarding high-priced weddings. The claimant went to Lammers after Linster told the claimant she was not allowed to do high-priced wedding. After the claimant talked to Lammers, he indicated he would talk to Linster because it was not his intention that the claimant would not do high-priced weddings, he just did not want to limit business to only weddings.

The evening of October 31 at 8:50 p.m., the claimant received a call at home from an employee who worked that evening. The employee, D., called the claimant to let her know she had taken an employee to the emergency room that night and had not been able to get her job duties completed. Since the claimant was not the manager, she asked why D. had not called Linster. The employee explained that she believed Linster was already in bed and had not wanted to disturb Linster. At 5:00 a.m., the next morning, the claimant called Linster to let her know what had happened at the store the night before. Linster was upset that D. had called the claimant and not Linster the night before. After Linster yelled at the claimant over the phone, the claimant hung up on her. About 15 minutes later, D. called to let the claimant know Linster had called her to yell at D. about not contacting her the night before. D. told the claimant that Linster hung up on her.

The claimant did not believe that she or anyone else should be subjected to Linster's yelling and inappropriate comments. The claimant went to work two hours early to talk to management. When Lammers first saw the claimant, she told him she was quitting because of a phone conversation she had with Linster that morning. Lammers asked the claimant for a meeting between the three of them so they could sit down and attempt to resolve the problem. The claimant declined this suggestion, and instead indicated she would transfer to another store. Lammers told the claimant that if she wanted to transfer, she could look to see if another store needed a floral designer and he would give her good references. After the claimant indicated she was done that day, Lammers asked the claimant to think about this decision for a day and get back to him.

The afternoon of November 1, employees told the claimant that Linster told them that if she started acting inappropriately they were to give Linster a sign. After learning about this conversation, the claimant concluded the employer would do nothing to correct Linster's inappropriate conduct. On November 2, the claimant informed the employer she was quitting. The claimant quit because she incorrectly understood she had to quit to transfer to another store and could no longer work under Linster who created intolerable working conditions.

The claimant established a claim for benefits during the week of December 30, 2007. The claimant filed claims for the weeks ending January 5 through February 23, 2008. She received her maximum weekly benefit amount of \$270.00 for each week.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause attributable to the employer. Iowa Code § 96.5-1. When a claimant quits, she has the burden to establish she quit for reasons that qualify her to receive unemployment insurance benefits. Iowa Code § 96.6-2. The facts establish that the claimant made the decision to quit her employment.

The law presumes a claimant voluntarily quits employment without good cause when she leaves because of a conflict with a supervisor. 871 IAC 24.25(22). The claimant also presumes a claimant quits with good cause when she leaves employment because of intolerable or detrimental working conduction. 871 IAC 24.26(4).

The claimant acknowledged that generally she did not have problems working with Linster on a daily basis. The evidence indicates that when Linster became frustrated or was under stress, the claimant and other employees bore the brunt of her frustration by giving them conflicting instructions or criticizing work that she had previously indicated was acceptable.

The morning of November 1, Linster was upset that D. had not called her the night before and instead called the claimant. As a result of being upset with D., Linster yelled at the claimant. The claimant did not expect such inappropriate treatment for being an innocent middle person and hung up on Linster. Instead of taking time to calm down, Linster then called D. and yelled at her. D. called the claimant to let her know what Linster had just done to her.

The claimant did not believe she needed to put up with Linster's inappropriate behavior and decided she could no longer work with Linster. The claimant went to work early on November 1, to quit. Instead of trying to get the problem with Linster resolved, the claimant told Lammers she was quitting. Although Lammers suggested a meeting between the claimant, Linster and Lammers, the claimant declined such a meeting. After Lammers asked her to think carefully about her decision, the claimant said she would be interested in a transfer. Lammers indicated he would see if another store needed a floral designer and would give her a good recommendation. Although Lammers asked the claimant to seriously consider her decision to quit, the next day the claimant confirmed that she was quitting and would not return to work at that location.

On November 1, the claimant was justifiably upset with the way Linster talked to her or yelled at her over the phone. Since this was the first time Linster had responded in this manner, the facts do not establish that this isolated incident rises to the level of intolerable or detrimental working conditions. Linster did not act appropriately and if the claimant had given the employer an opportunity, the employer should have disciplined Linster for her inappropriate behavior. Before the claimant even talked to Lammers, she made the decision she would not continue to work with Linster. When the employer first saw the claimant, she indicated she was quitting.

The claimant did not know the procedure she needed to follow to transfer to another store, but the facts show she was not willing to take time to see if there was an opening at another store in which she could transfer.

The claimant was justifiably upset at the way Linster talked to her at 5:00 a.m. on November 1. Linster's comments and behavior were inappropriate. This isolated incident does not constitute intolerable working conditions. The claimant established compelling reasons for quitting. She quit though for reasons that do not qualify her to receive unemployment insurance benefits. As of December 30, 2007, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits she is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code § 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending January 5 through February 23, 2008. The claimant has been overpaid \$2,160.00 in benefits she received for these weeks.

**DECISION:**

The representative's January 18, 2008 decision (reference 01) is reversed. The claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. The claimant is disqualified from receiving unemployment insurance benefits as of December 30, 2007. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged. The claimant has been overpaid and must repay a total of \$2,160.00 in benefits she received for the weeks ending January 5 through February 23, 2008.

---

Debra L. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

dlw/css