

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JOSEPH W SPIEWAK  
1028 JOHNSON ST  
DES MOINES IA 50315

HY-VEE INC  
C/O TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

HY-VEE  
C/O TALX UC EXPRESS  
3799 VILLAGE RUN DR #511  
DES MOINES IA 50317

Appeal Number: 05A-UI-08830-DWT  
OC: 07/24/05 R: 02  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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 August 18, 2005 decision (reference 01) that concluded Joseph W. Spiewak (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 15, 2005. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf. Joe Foster, an assistant manager testified for the employer. Travis Edwards was available to testify, and Karee White 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 his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on October 20, 2004. The claimant worked part time or 20 to 35 hours a week. The claimant sacked groceries, got carts, worked with the recyclables and most recently worked in the dairy department.

On July 24, Foster told the claimant he was going to be transferred out of the dairy department and would go back to cans and bottles, sacking groceries and getting carts. The claimant did not have a problem with transferring back to his previous job. After Foster finished talking to the claimant, the claimant went home to get his brother. The claimant dropped his brother off at work so his brother could also talk to Foster. The claimant left his brother at the store and then left.

Hours later, the claimant's brother told the claimant that when he had finished talking to Foster, Foster told him that the claimant needed to talk to Foster again within that next hour or the claimant would not have a job. The claimant received Foster's message hours after his brother talked to Foster. By the time he learned Foster wanted to talk to him again, the claimant assumed he no longer had a job. The claimant did not contact the employer to explain why he had not called him before or to find out why Foster wanted to talk to him again. Although the claimant was scheduled to work after July 24, the claimant did not go back to work. The employer did not contact the claimant to find out why he was not reporting to work as scheduled.

The claimant established a claim for unemployment insurance benefits during the week of July 24, 2005. The claimant filed claims for the weeks ending July 30 through September 10, 2005. The claimant received a total of \$520.00 in benefits for these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts do not establish that the employer discharged or even intended to discharge the claimant. Even though the employer was not satisfied with the claimant's performance in the dairy department, the employer told the claimant he would be transferred back to can and bottles. When the claimant left to get his brother, the claimant indicated it was not a problem to work with cans and bottles again.

The claimant's failure to contact the employer anytime after July 24 indicates the claimant voluntarily quit his employment. Even if the claimant relied on his brother's statement that he did not have a job unless he contacted Foster within an hour of his brother's discussion with Foster, the claimant's failure to let Foster know he had not received Foster's message about talking to Foster again further indicates that the claimant had no desire to return back to work.

This coupled with the claimant's failure to return to work or a call again amounts to job abandonment or a voluntary quit.

When a claimant quits, he has the burden to establish he quit with good cause attributable to the employer. Iowa Code §96.6-2. The law presumes a claimant voluntarily leaves employment without good cause when he quits after receiving a reprimand. 871 IAC 24.25(28). The evidence indicates the claimant in part failed to return to work or contact Foster again because the employer reprimanded him for unsatisfactory work in the dairy department.

The claimant established personal reasons for quitting or failing to return to work. These reasons do not, however, qualify him to receive unemployment insurance benefits. As of July 24, 2005, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he 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 July 30 through September 10, 2005. The claimant has been overpaid \$520.00 in benefits he received for these weeks.

#### DECISION:

The representative's August 18, 2005 decision (reference 01) is reversed. The employer did not discharge the claimant. The claimant quit his employment for reasons that do not qualify him to receive benefits. The claimant is disqualified from receiving unemployment insurance benefits as of July 24, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive benefits for the weeks ending July 30 through September 10, 2005. The claimant has been overpaid and must repay \$520.00 in benefits he received for these weeks.

dlw/kjw