

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APRIL A JESSEN
Claimant

APPEAL NO. 10A-UI-02954-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 01/24/10
Claimant: Respondent (2-R)

Section 96.5(1) – Quit

STATEMENT OF THE CASE:

The employer, Hy-Vee, filed an appeal from a decision dated February 17, 2010, reference 01. The decision allowed benefits to the claimant, April Jessen. After due notice was issued a hearing was held by telephone conference call on April 8, 2010. The claimant participated on her own behalf. The employer participated by Assistant Store Director Ray Bishop, Store Director Tony Brown and was represented by UIS in the person of Tim Speir.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer.

FINDINGS OF FACT:

April Jessen was employed by Hy-Vee from December 1, 2004 until January 19, 2010 as a part-time employee. She was hired to be part-time. In August 2008 she requested, and was granted, full-time status. At her request she went back to part-time hours in May 2009, and later took time off until November 2009 for maternity leave. After she returned she was still on part-time status. She had certain days and hours she could not work due to other obligations, and that limited the number of hours the employer could find to schedule her.

Ms. Jessen had requested at least 30 hours per week when she returned to work and Store Director Tony Brown said there was no guarantee but they would do what they could. After that she approached Mr. Brown several times to ask about more hours and he referred her to Assistant Store Director Ray Bishop, who made out the schedule. She did not talk with him.

On January 18, 2010, the claimant left in the middle of her shift because she was upset about the number of hours she had been scheduled to work on the newly posted schedule. She came in the next day to talk with Mr. Bishop and he intended to discuss her leaving in the middle of her shift the night before. She wanted to talk about the number of hours she was scheduled to work. When she refused to discuss more fully her leaving the day before Mr. Bishop told her to go home and to talk with Mr. Brown before returning to work. At that point she said she would not be returning and later sent a text message to the store director notifying him she quit.

April Jessen has received unemployment benefits since filing a claim with an effective date of January 24, 2010.

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.

871 IAC 24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

The claimant requested to go to part-time hours and the employer agreed, but there was no guarantee of any minimum number of hours. Ms. Jessen may have requested at least 30 hours per week but there was no firm promise this would happen. She never discussed her concerns with Mr. Bishop, who did the scheduling, and finally elected to quit. She might have been scheduled for more hours but the restrictions she put on her availability made this difficult. In addition, January is traditionally a slow month for retail businesses and hours were being reduced for many of the part-time employees.

Her decision to quit was based on her belief she should have gotten more hours which were simply not available. This is a voluntary quit without good cause attributable to the employer and the claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment

compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of February 17, 2010, reference 01, is reversed. April Jessen is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs