

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND D COMFORT
Claimant

APPEAL NO. 16A-UI-13311-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 11/20/16
Claimant: Appellant (4/R)

Iowa Code Section 96.5(1) – Voluntary Quit

871 IAC 24.27 – Voluntary Quit of Part-time Employment

STATEMENT OF THE CASE:

Raymond Comfort filed a timely appeal from the December 8, 2016, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Mr. Comfort voluntarily quit on August 31, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 6, 2017. Mr. Comfort did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Keith Mokler of Corporate Cost Control represented the employer and presented testimony through Cara Grave and Brad Romer.

ISSUES:

Whether Mr. Comfort's voluntary quit was for good cause attributable to the employer.

Whether the quit was from part-time employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Raymond Comfort was employed by Hy-Vee as a part-time night stock employee from October 2015 until August 31, 2016 when he voluntarily quit by ceasing to appear for work or make further contact with the employer. Mr. Comfort's usual work hours were 10:00 p.m. to 6:00 a.m., three shifts per week. Mr. Comfort's immediate supervisor was Brad Romer, Night Stock Manager. Mr. Comfort was absent from his shift on October 30, 2016. At the start of the shift on August 31, 2016, Mr. Romer discussed the absence with Mr. Comfort. Mr. Comfort told Mr. Romer that he had been absent due to a lack of sleep in connection with dealing with his wife's hospitalization. Mr. Romer told Mr. Comfort that other employees had appeared for work with a similar lack of sleep and that Mr. Romer's absence had imposed an additional burden on those other employees who had to complete his share of the overnight stock duties. After this discussion at the beginning of the shift, Mr. Comfort worked the remainder of his shift. However, Mr. Comfort did not appear for subsequent shifts or make further contact with the

employer. At the time Mr. Comfort ceased contact with the employer his employment had not been in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Iowa Admin. Code r. 871-24.25(28) 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:

- (28) The claimant left after being reprimanded.

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.

An individual who voluntarily quits part-time employment without good cause attributable to the employer and who has not re-qualified for benefits by earning ten times his weekly benefit amount in wages for insured employment, but who nonetheless has sufficient other wage credits to be eligible for benefits may receive reduced benefits based on the other base period wages. See 871 IAC 24.27.

The weight of the evidence in the record establishes that Mr. Comfort quit without good cause attributable to the employer in response to the verbal reprimand issued on August 31, 2016. Mr. Comfort did not participate in the hearing. Mr. Comfort did not present any evidence to rebut the employer's testimony the Mr. Comfort voluntarily quit and was not discharged. Mr. Comfort did not present any evidence to prove that the quit was for good cause attributable to the employer. The evidence further establishes that the quit was from part-time employment.

Because the quit was without good cause attributable to Hy-Vee, that employer's account will be relieved of liability for benefits paid to Mr. Comfort. Because the quit was without good cause attributable to Hy-Vee, Mr. Comfort is disqualified for benefits *based on base period wage credits from the Hy-Vee employment* until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. However, because the disqualifying quit was from part-time employment, Mr. Comfort remains eligible for reduced benefits based on base period wage credits from employment *other than the Hy-Vee employment*, provided he meets all

other eligibility requirements. This matter is remanded to the Benefits Bureau for redetermination of Mr. Comfort's eligibility for reduced benefits.

DECISION:

The December 8, 2016, reference 01, decision is modified as follows. The claimant voluntarily quit the part-time employment on effective August 31, 2016 without good cause attributable to the employer. The employer's account is relieved of liability for benefits. The claimant is disqualified for benefits *based on base period wage credits from the Hy-Vee employment* until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. However, the claimant remains eligible for reduced benefits based on base period wage credits from employment *other than the Hy-Vee employment*, provided he meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for redetermination of the claimant's eligibility for reduced benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs