

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ETTER, BRYAN, F
Claimant

APPEAL NO. 11A-UI-00952-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/05/10
Claimant: Appellant (4)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.5(1)(g) - Requalification

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 13, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 23, 2011. Claimant participated. Dave Lamb represented the employer. The administrative law judge took official notice of the Agency's administrative record of wages reported by or for the claimant.

ISSUE:

Whether the claimant separated from the employment for a reason that would disqualify him from unemployment insurance benefits.

Whether the claimant requalified for unemployment insurance benefits by earning at least ten times his weekly benefit amount through insured work between the date he separated from Hy-Vee and the date he established his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Bryan Etter was employed by Hy-Vee in Newton as a part-time kitchen clerk until December 24, 2009, when he voluntarily quit the employment. Mr. Etter had enlisted in the Iowa National Guard in November 2009 and left for basic training on January 6, 2010. Mr. Etter completed his National Guard training on June 14, 2010 and returned to Newton.

Mr. Etter began new employment with P & B Lawn Care, L.L.C. (employer account number 344360) in August 2010. For the third quarter of 2010 that employer reported \$1,551.00 in wages paid to Mr. Etter. For the fourth quarter of 2010, that employer reported \$3,422.00 in wages paid to Mr. Etter. Thereafter, Mr. Etter established a claim for unemployment insurance benefits that was effective December 5, 2010. Mr. Etter's weekly benefit amount was set at \$108.00.

Hy-Vee was the claimant's only "base period" employer for purposes of the claim year that started December 5, 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.

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.

A claimant who separates from employment for a reason that disqualifies him for benefits can requalify for benefits by earning ten times his weekly benefit amount, provided the claimant is otherwise eligible. See Iowa Code section 96.5(1)(g).

The weight of the evidence establishes that Mr. Etter voluntarily the employment at Hy-Vee effective December 4, 2009, for personal reasons and not for good cause attributable to the employer. The employer's account will not be charged for benefits. The quit disqualified Mr. Etter for benefits until he had worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he was otherwise eligible. Prior to establishing the claim for benefits that was effective December 5, 2010, Mr. Etter requalified for benefits by earning more than ten times his weekly benefit amount since separating from the employment at Hy-Vee. Mr. Etter is eligible for benefits in connection with the claim effective December 5, 2010, provided he is otherwise eligible.

DECISION:

The Agency representatives January 13, 2011, reference 01, decision is modified as follows. The claimant voluntarily quit the employment without good cause attributable to the employer effective December 24, 2009. The employer's account will not be charged for benefits. The claimant requalified for benefits by earning more than ten times his weekly benefit amount after separating from the employment at Hy-Vee and before he established the unemployment insurance claim that was effective December 5, 2010. The claimant is eligible for benefits in connection with the claim effective December 5, 2010, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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