

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MEGHAN F HEDRICK
Claimant

APPEAL NO: 06A-UI-08965-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08-06-06 R: 02
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 31, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on September 21, 2006. Claimant responded to the hearing notice instructions but was not available when the hearing was called and did not participate. Employer participated through Kevin Hudacheck and Grant Mitchell and was represented by David Williams of TALX UC eXpress. Karee White observed.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct or if she quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time cashier from April 12, 2006 through July 27, 2006, when she quit. Her last day of work was June 30, 2006, when employer confronted her about another employee's report of taking pop without paying for it. She acknowledged the conduct and pleaded with employer to keep her job. Employer told her she was suspended for one week and to think about whether she wanted to continue working there. She was scheduled to return to work July 8, 2006, but did not report back. Employee schedules are posted in the break room and employees are expected to keep track of their own schedules. Grant Mitchell also called her cell phone and left a message asking her to return the call. She never did so.

The claimant has received unemployment benefits since filing a claim with an effective date of August 6, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left her employment without good cause attributable to the employer.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

Claimant was suspended rather than fired and since she did not report back to work as scheduled or otherwise communicate with employer, she is considered to have abandoned her job. Benefits are denied.

The administrative law judge further concludes claimant has been overpaid benefits.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The August 31, 2006, reference 01, decision is reversed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The claimant is overpaid benefits in the amount of \$675.00.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw