

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MALISSA A SIMMS
Claimant

APPEAL NO. 14A-UI-08891-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 08/03/14
Claimant: Respondent (2)

Iowa Code § 96.5(1)d – Voluntary Leaving/Illness or Injury
871 IAC 24.25(35) – Separation Due to Illness or Injury

STATEMENT OF THE CASE:

The employer filed an appeal from the August 19, 2014, (reference 01) unemployment insurance decision that allowed benefits. After due notice was issued a hearing was held on September 15, 2014. The claimant did not participate. The employer did participate through Janet Peterson, Human Resources Manager and through Lee Schwartz, Manager of Store Operations and was represented by James Tranfaglia of Corporate Cost Control.

ISSUE:

Did the claimant voluntarily quit his employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part time as a salad bar clerk beginning on April 17, 2007 through August 4, 2014 when she voluntarily quit.

On July 29, 2014 the employer learned that the claimant was having her daughter, who was not an employee of Hy-Vee, punch her in to work on the time clock. The employer's policy is clear that only the employee is allowed to punch in and out on the time clock.

The employer learned sometime later that the claimant was having her daughter punch her in and out because the claimant was losing her eyesight. Prior to July 29 the claimant had not asked the employer for any kind of accommodation due to her poor eyesight. At a meeting on August 4 the claimant was told the employer was rescinding their termination of her after learning more about her vision issues and that they would accommodate her going forward. The claimant told Mr. Schwartz that she had since learned that her vision was failing more quickly and that she no longer believed she would be able to continue working. The claimant voluntarily quit due to her personal medical condition resulting in poor eyesight. Continued work was available for the claimant if she had wanted to continue working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is separated from the employment without good cause attributable to the employer.

Iowa Code § 96.5(1)d 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) 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 § 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 § 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

The record reflects that claimant's voluntarily quit due to her poor eyesight which is a medical condition not related to her work. Accordingly, although the separation was for good personal reasons, it was without good cause attributable to the employer and benefits must be denied.

DECISION:

The August 19, 2014, (reference 01) decision is reversed. The claimant voluntarily quit her employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible. As no unemployment insurance benefits have been paid or claimed, the issue of overpayment is moot.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css