

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHELLEY L ALLISON
Claimant

APPEAL NO. 11A-UI-05265-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 03/20/11
Claimant: Appellant (1)

Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Shelley Allison filed an appeal from a representative's decision dated April 11, 2011, reference 01, which denied benefits based on her separation from Hy-Vee, Inc. After due notice was issued, a hearing was held by telephone on May 16, 2011. Ms. Allison participated personally and offered additional testimony from Jeff Buseman. Exhibits A and B were admitted on her behalf. The employer participated by Leann Abrahamson, Human Resources Manager, and Steve Mercer, Bakery Manager. Exhibits One and Two were admitted on the employer's behalf. The employer was represented by Paula Mack of Corporate Cost Control, Inc.

ISSUE:

At issue in this matter is whether Ms. Allison was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Allison began working for Hy-Vee, Inc. on January 26, 2010. She worked approximately 35 hours each week as a baker and donut icer. Her last day of work was March 15, 2011. She was arrested when she reported to work for her 12:00 midnight shift on March 16. Her boyfriend notified the employer that she would be unable to report for her shift on March 17. Neither Ms. Allison nor anyone acting on her behalf called to report the absence of March 18.

Ms. Allison was next scheduled to work at midnight on March 22. Her boyfriend called the bakery manager on March 20 to say he thought Ms. Allison was getting out of jail on March 22. She was released from jail at approximately 10:00 p.m. on March 22. She did not report for work or contact the employer regarding the shift that began at midnight on March 22. When she called the employer on March 23, she was told her job was no longer available.

REASONING AND CONCLUSIONS OF LAW:

An individual is deemed to have left employment if she becomes incarcerated. 871 IAC 24.25(16). The separation is presumed to be without good cause attributable to the employer. 871 IAC 24.25(96). The fact that the employer had notice of Ms. Allison's incarceration does not alter the fact that she was unable to report for work because she was in jail. Hy-Vee, Inc. did not agree to hold her job while she was in jail. Although there was testimony concerning a request for a leave of absence to cover the absences, the employer never received any such request. Moreover, the employer was not obligated to allow the absences caused by incarceration to be covered by a leave of absence.

For the reasons cited herein, it is concluded that Ms. Allison's separation was not for any good cause attributable to the employer. Even if the administrative law judge were to conclude that the separation was a discharge, Ms. Allison still would not be entitled to job insurance benefits. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code § 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Allison missed four days of work (March 16, 17, 18, and 22) because she was in jail. Absences due to matters of purely personal responsibility, such as incarceration, are not excused. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). Four consecutive unexcused absences would be sufficient to establish excessive unexcused absenteeism, which constitutes disqualifying misconduct.

The administrative law judge has considered Exhibits A and B admitted on Ms. Allison's behalf. The documents are not credible and tend to contradict the testimony given by Ms. Allison and her witness.

DECISION:

The representative's decision dated April 11, 2011, reference 01, is hereby affirmed. Ms. Allison left her employment with Hy-Vee, Inc. for no good cause attributable to the employer. Benefits are denied until she has worked in and been paid wages for insured work equal to ten times her weekly job insurance benefit amount, provided she is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs