

## UNEMPLOYMENT INSURANCE APPEALS

**JOHN A LINDSTROM**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 17A-UI-05137-B2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/23/17**  
**Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available  
Iowa Code § 96.5-1 – Voluntary Quit

### **STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 10, 2017 reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 7, 2017 in person. Claimant participated personally. Employer participated by hearing representative Judy Derry and witnesses Steve Deutmeyer and Wes Brommel. Employer's Exhibits 1-5 were admitted into evidence.

### **ISSUES:**

Whether claimant is able and available for work?

Whether claimant quit for good cause attributable to employer?

### **FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on April 4, 2017. Claimant quit work on that date as he stated that his health situation was such that he could no longer continue to be a checker for employer.

Claimant had worked for employer for over five years. During that time he suffered a heart attack. Claimant returned to work, and as claimant had a doctor's note indicating that he was not to lift over ten pounds; claimant was transferred from a position emptying trucks to a position working as a checker. Claimant worked in that position for over a year. During that time claimant never brought forth concerns about an inability to continue his work because of health conditions.

Claimant stated that after work in the early morning hours of April 5, 2017 he went to his doctor. The doctor suggested that claimant not continue working because of ongoing health concerns with him being on his feet for an extended period each day during work. Claimant said he then called his supervisor to inform the supervisor that he was quitting. Claimant did not have any further contact with employer about accrued time off or his retirement account.

Employer stated that claimant was asked to meet with the store manager after work in the early morning hours of April 5, 2017. Claimant stated that he'd meet, but had to get to a doctor's appointment. The company loss control department had come to the store to meet with claimant about allegations that claimant had been giving away groceries to a particular customer. Claimant had never met with the store director in his office prior to being asked to meet on this date.

Employer stated that after claimant left the morning of April 5, 2017 without meeting the store manager and loss prevention, he never had any further contact with anyone at the store. Claimant had previously contacted the human resources officer many times, and claimant stated that he was asked to contact human resources when he said he called his supervisor to quit. He didn't explain why he didn't make the contact.

Claimant stated that he is able and available to work as long as he doesn't have to stand for extended periods or have to lift ten pounds or more. He stated that he knew employer had no positions fitting these restrictions, so he didn't ask for a different job.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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.

The administrative law judge holds that the evidence has failed to establish that claimant voluntarily quit for good cause attributable to employer when claimant terminated the employment relationship because his heart problems were exacerbated by standing. Claimant did not alert employer of his problems with the checker position, and gave employer no opportunity to try and find a more appropriate position for claimant.

The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991). Claimant in this matter stated that he was being restricted from standing. He would not

be deemed able and available for work had claimant not been denied benefits for his voluntary quit without good cause attributable to employer.

**DECISION:**

The decision of the representative dated May 10, 2017, reference 01 is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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