

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH M MAKWER
Claimant

APPEAL NO. 11A-UI-07803-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 05/15/11
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 7, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on July 12, 2011 in Des Moines, Iowa. Claimant participated. Employer participated through store director (since April 2011) Doug Mezger and was represented via telephone by Alice Thatch of Corporate Cost Control.

ISSUE:

The issue is whether claimant quit the 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: Claimant was employed as a part-time (32 hours per week Monday through Thursday) night shift stocker at the Denison Hy-Vee from October 20, 2010 through May 1, 2011. His last day of work was April 28, 2011. He had a family emergency after his mother, who lives in Minnesota, had a stroke on April 13. There is no record that he called the employer to ask for time off but he called on April 24 to report his absence without giving a reason. He worked April 28 and called Assistant Manager Mike on May 1 to notify him that he was moving to Des Moines. He was a no-call/no-show on May 2. Employer waited until mid-May to hire a replacement. Claimant had spoken to Mezger in early April about transferring to a store in the Des Moines area but he did not tell him of any concerns about his schedule. Mezger gave him contact information from area stores and told him he would have to apply and be hired but he would give him a reference and transfer his employee file upon hire. No store ever contacted Mezger about the claimant. Continued work was available.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

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.

871 IAC 24.25(2) and (3) provide:

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:

(2) The claimant moved to a different locality.

(3) The claimant left to seek other employment but did not secure employment.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). 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).

Since claimant's mother's illness was earlier in the month and he did not ask for time off, he did not follow up with Mezger about his schedule, and notified another manager that he was moving out of the area, his failure to continue reporting to work was a voluntary abandonment of his job. Benefits are denied.

DECISION:

The June 7, 2011 (reference 01) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css