

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERTA DI CHIARA
Claimant

APPEAL NO: 11A-UI-02023-E

**ADMINISTRATIVE LAW JUDGE
DECISION**

CODY CAL INC
Employer

OC: 01-09-11
Claimant: Appellant (1-R)

Section 96.5-1 – Voluntary Leaving
871 IAC 24.27 – Voluntary Quit of Part-Time Employment

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 11, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on March 15, 2011. The claimant participated in the hearing. Suzanne Summy, general manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant's voluntary separation from her part-time employment qualifies her to receive unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time server for Cody Cal (Greenbriar) from August 14, 2000 to March 25, 2010. She called the employer March 29, 2010, and reported that she broke three fingers in her right hand. Her doctor had taken her off work for two weeks and the claimant did not know what would happen after that. The general manager said she was sorry that happened and told the claimant she would need a note before returning to work. The employer told the claimant to maintain contact so the employer would know when to put the claimant back on the schedule. The claimant did not talk to the employer again until July 17, 2010, when she went to work with a doctor's note. The employer said she believed the claimant had quit, since she had not heard from her for four months.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant has the burden of proving that the voluntary quit was for a good reason that would not disqualify her. Iowa Code section 96.6-2. Inasmuch as the claimant failed to call or report to work for four months, she is considered to have voluntarily left her employment without good cause attributable to the employer.

However, an individual who quits part-time employment without good cause, yet is otherwise monetarily eligible based on wages paid by other base-period employers, shall not be disqualified for voluntarily quitting the part-time employment. Benefit payments shall not be based on wages paid by the part-time employer and charges shall not be assessed against the part-time employer's account. Once the individual has met the requalification requirements, the wages paid from the part-time employment can be used for benefit payment purposes. 871 IAC 24.27.

Based on this regulation, this matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits when the wage credits the claimant earned while working for the employer are not used in determining the claimant's monetary eligibility or her maximum weekly benefit amount.

DECISION:

The February 11, 2011, reference 01, decision is affirmed. The claimant voluntarily quit her part-time employment for disqualifying reasons. Therefore, the employer's account will not be charged. This matter is remanded to the Claims Section to determine whether the claimant is monetarily eligible to receive unemployment insurance benefits and to determine what her maximum weekly benefit amount is when the wage credits the claimant earned from the employer are not taken into consideration to determine these two issues.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw