

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANNA A ZILISCH
Claimant

RATERLABS INC
Employer

APPEAL 19A-UI-10188-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/10/19
Claimant: Appellant (4-R)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(1)g – Voluntary Leaving/Requalification
Iowa Code § 96.5(12) – Supplemental Part-time Employment
Iowa Admin. Code r. 871-24.27 – Voluntary Quitting – Part-time Employment

STATEMENT OF THE CASE:

On December 23, 2019, Shanna Zilisch (claimant) filed an appeal from the December 11, 2019, reference 02, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with Raterlabs, Inc. (employer) for personal reasons which does not constitute good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2020. The claimant participated personally. The employer participated through Elizabeth Colbert-Zimmerman, HR Manager, and was represented by Peggy Leight. The Claimant's Exhibits A and B and the Employer's Exhibits 1 through 4 were admitted into the record without objection. The administrative law judge took official notice of the claimant's wage history.

ISSUES:

Did the claimant voluntarily quit part-time employment with good cause attributable to employer?

Has the claimant requalified or is she otherwise monetarily eligible for benefits?

Is the employer liable for benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as an Internet Analyst beginning on June 12, 2019, and her last day worked was July 12. When the claimant was hired, she was experiencing pain in her wrists and hands from a previous job. The job with the employer required the claimant to type on a computer keyboard from ten to 26 hours a week. On June 19, the employer increased the minimum number of hours needed to work to 15 hours.

On July 24, the claimant requested a leave of absence from July 12 through August 17 which was granted. On August 20, the claimant requested time off from August 18 through September 6 due to surgery but she did not know how long the recovery time would be. The

employer approved the request but sent the claimant an email stating she had been away from the project for an extended period of time and recommended she resign her position and reapply once she was able to work again.

On or about September 4, the claimant submitted her resignation to the employer due to injuries to both her hands. She stated she was scheduled for surgery on September 19 and would require a month of recovery before surgery could be performed on her other wrist. The employer accepted the claimant's resignation.

The claimant had her surgeries and was released to return to work without restriction on December 3. The claimant contacted Elizabeth Colbert-Zimmerman, HR Manager, asking if she could return to work. Colbert-Zimmerman responded that the claimant would need to do the qualification assessment again in order to reactivate her position. The claimant did not complete the assessment because she wanted to look for a more permanent job.

The administrative record shows that the claimant has not requalified for benefits since this separation but reflects she appears to be otherwise monetarily eligible for benefits after this part-time employer's wages are excluded from the base period.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left employment without good cause attributable to the employer and has not requalified, but she appears to be otherwise monetarily eligible. Benefits are allowed, provided the claimant is otherwise eligible. This part-time employer's account shall not be charged.

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

...

12. Supplemental part-time employment. If the department finds that an individual is disqualified for benefits under subsection 1 or 2 based on the nature of the individual's separation from supplemental part-time employment, all wages paid by the supplemental part-time employer to that individual in any quarter which are chargeable following a disqualifying separation under subsection 1 or 2 shall not be considered wages credited to the individual until such time as the individual meets the conditions of requalification as provided for in this chapter, or until the period of disqualification provided for in this chapter has elapsed.

Iowa Admin. Code r. 871-24.26(6)b provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(6) Separation because of illness, injury, or pregnancy.

...

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

Iowa Admin. Code r. 871-24.27 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 Form 65-5323, 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.

This rule is intended to implement Iowa Code section 96.5(1)"g."

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). In this case, the claimant cannot establish that she voluntarily quit with good cause attributable to the employer. She did not ask for reasonable accommodation, which the employer denied, prior to leaving her employment. Additionally, she did not accept the work the employer had available to her after she was released to work by her doctor.

The claimant's separation would be disqualifying; however, workers who are disqualified from part-time employment based upon the reason for the separation may be eligible to receive reduced unemployment insurance benefits, provided they have sufficient wage credits from other base-period employers to remain monetarily eligible, and provided they are otherwise eligible. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016); codified on July 2, 2017, at Iowa Code § 96.5(12). In this event, the part-time employer's account will not be assessed for benefits paid to the claimant and the employer's wage credits will not be considered in determining benefits for claimant until he or she has requalified by having worked in and been paid wages for insured work equal to ten times their weekly benefit amount.

The claimant has other wages in her base record that render her monetarily eligible for benefits even after the wages earned from this employer are removed. Benefits are allowed, provided the claimant is otherwise eligible. The wage credits earned from this employer shall be removed from the claimant's base period until such time as she has earned ten times her weekly benefit amount in insured wages.

DECISION:

The December 11, 2019, reference 02, unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer and has not requalified for benefits but appears to be otherwise monetarily eligible. Benefits are allowed, provided she is otherwise eligible. The account of this part-time employer (594219) shall not be charged.

REMAND:

The claimant's monetary eligibility may need to be redetermined with the wage credits from this employer removed from consideration when determining the claimant's weekly and maximum benefit amounts.

A handwritten signature in blue ink that reads "Stephanie R Call". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Stephanie R. Callahan
Administrative Law Judge

January 17, 2020
Decision Dated and Mailed

src/scn