

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILINE BRITTON
Claimant

APPEAL NO. 13A-UI-06684-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 05/05/13
Claimant: Appellant (4-R)

Section 96.5(1)(a) – Voluntary Quit to Accept Other Employment
Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Emeline Britton filed a timely appeal from the May 30, 2013, reference 01, decision that denied benefits based on an agency conclusion that she was not partially unemployed from Hy-Vee. After due notice was issued, a hearing was held on July 9, 2013. Ms. Britton participated. Julia Church of Corporate Cost Control represented the employer and presented testimony through Gayle Graber and John Mitterman. The parties waived formal notice on whether the claimant had voluntarily quit without good cause attributable to the employer and/or been discharged for misconduct. Exhibits One, Two and Four were received into evidence. The administrative law judge took official notice of the agency's record (DBRO and WAGEA) of benefits disbursed to the claimant and wages reported by or for the claimant. The administrative law judge took official notice of the agency's record (KCCO) of the claimant's weekly report to the agency via the Internet claim reporting system.

ISSUES:

Whether Ms. Britton separated from Hy-Vee. She did.

Whether Ms. Britton separated from the employment for a reason that disqualifies her for benefits or that relieves Hy-Vee of liability for benefits.

Whether the claimant has been able to work and available for work since she established her claim for benefits.

Whether the claimant has been partially unemployed since she established her claim.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On or about February 13, 2013, Emeline Britton voluntarily left her full-time position as a pharmacy technician at Hy-Vee to accept new employment with employer Real Time Staffing Services, employer account number 321601. Hy-Vee used the term Regular Time to denote a particular type of full-time employment and Ms. Britton was a Regular Time employee prior to her

separation. Ms. Britton started the new employment on February 14, 2013. To make it easier for Ms. Britton to return to Hy-Vee in the future, the parties agreed to suspend Ms. Britton's employment but not process a termination of the employment. Ms. Britton was laid off from Real Time Staffing on May 5, 2013. At the time of the layoff, Real Time Staffing notified Ms. Britton that they expected to recall Ms. Britton to the employment in September 2013.

In April 2013, Ms. Britton contacted Hy-Vee Pharmacy Manager John Mitterman to discuss her impending layoff from Real Time Staffing and to discuss any work that Hy-Vee might have for her. Mr. Mitterman said he might use Ms. Britton on Monday, April 29, 2013. On Friday, April 26, Ms. Britton notified Hy-Vee that her employment with Real Time Staffing would last longer than she expected. The parties had no further contact until June 10, 2013, when Hy-Vee contacted Ms. Britton about working on Thursday, June 20, 2013. Ms. Britton was pregnant and about to give birth. On June 10, 2013, Ms. Britton told Hy-Vee that she was to have her labor induced on June 18, 2013 and would not be available for work for a while. Ms. Britton had her baby on June 18, 2013. As of the July 9, 2013, appeal hearing, Ms. Britton had not been released by her doctor to return to work. Nor had her doctor told she could not work. Since the baby's birth, the baby has been Ms. Britton's focus. At the time of the appeal hearing, Ms. Britton had an appointment set for July 16, 2013 and expected to discuss her return to work with the doctor at that time.

Ms. Britton established a claim for unemployment insurance benefits that was effective May 5, 2013. Ms. Britton received benefits for the weeks ending May 11, 2013 through July 6, 2013. The weekly benefit amount disbursed to Ms. Britton for each of those weeks was \$215.00. Aside from the above-mentioned contact with Hy-Vee, Ms. Britton has not sought other employment since she established her claim for benefits.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code section 96.5(1)(a) provides as follows:

Causes for disqualification.

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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, *and the individual performed services in the new employment*. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

[Emphasis added.] The administrative law judge must follow the plain language of the statute.

The weight of the evidence in the record establishes that Ms. Britton did indeed voluntarily quit the employment at Hy-Vee to accept other employment with Real Time Staffing Services and that she did indeed perform work for the new employment. The voluntary quit was without good cause attributable to Hy-Vee. Hy-Vee's account shall not be charged for benefits paid to Ms. Britton. The February 13, 2013 separation from Hy-Vee did not disqualify Ms. Britton for unemployment insurance benefits. Instead, given the circumstances of the separation, Ms. Britton would be eligible for benefits, provided she was otherwise eligible.

Iowa Code section 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".

871 IAC 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that

sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b). An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c).

The weight of the evidence establishes that Ms. Britton was temporarily unemployed from her employment with Real Time Staffing Services during the period of May 5, 2013 through the benefit week that ended June 15, 2013. Ms. Britton was able to work and available for work during that period. Ms. Britton was eligible for benefits for the period of May 5, 2013 through June 15, 2013, provided she was otherwise eligible.

Effective June 18, 2013, Ms. Britton was no longer available for work. On that day, she gave birth and caring for her newborn child understandably became the focus of her attention. Because Ms. Britton was not available for work at that time, she was no longer eligible for unemployment insurance benefits at that time. Benefits are denied effective the week that began June 16, 2013. Ms. Britton continued not to be available for work, and ineligible for benefits, at the time of the July 9, 2013 appeal hearing. The weight of the evidence indicates that Ms. Britton was unavailable for work at least through the benefit week that ended July 13, 2013.

Ms. Britton has not been attached to employment with Hy-Vee or partially unemployed from Hy-Vee since she established her claim for benefits.

This matter must be remanded for entry of an overpayment decision for the \$645.00 in benefits Ms. Britton received for the three-week period of June 16, 2013 through July 6, 2013.

This matter will be remanded to the Claims Division for determination of Ms. Britton's work availability for the period on or after July 14, 2013.

DECISION:

The agency representative's May 30, 2013, reference 01, decision is modified as follows. The claimant voluntarily quit the employment at Hy-Vee for the sole purpose of accepting other employment and did indeed perform work for the new employment. The voluntary quit was without good cause attributable to Hy-Vee. Hy-Vee's account shall not be charged for benefits. The February 13, 2013 separation from Hy-Vee did not disqualify the claimant for unemployment insurance benefits. The claimant would be eligible for benefits, provided she met all other eligibility requirements.

The claimant was temporarily unemployed from her employment with Real Time Staffing Services during the period of May 5, 2013 through the benefit week that ended June 15, 2013. The claimant was able to work and available for work during that period. The claimant was

eligible for benefits for the period of May 5, 2013 through June 15, 2013, provided she was otherwise eligible.

Effective June 18, 2013, the claimant was no longer available for work and no longer eligible for unemployment insurance benefits. Benefits are denied effective the week that began June 16, 2013. The claimant continued to be unavailable for work, and ineligible for benefits, through the benefit week that ended July 13, 2013.

The claimant has not been attached to employment with Hy-Vee or partially unemployed from Hy-Vee since she established her claim for benefits.

This matter is remanded for entry of an overpayment decision for the \$645.00 in benefits the claimant received for the three-week period of June 16, 2013 through July 6, 2013.

This matter is remanded to the Claims Division for determination of the claimant's work availability for the period on or after July 14, 2013.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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