

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY ZIN SCHMELZER

Claimant

APPEAL NO: 14A-UI-04589-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DUBUQUE COMMUNITY YWCA

Employer

OC: 04/06/14

Claimant: Respondent (4-R)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(13) – Dissatisfaction with Pay
871 IAC 24.27 – Part-time Employment

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 29, 2014, reference 03, that held claimant voluntarily quit employment with good cause attributable to the employer on December 31, 2013, and benefits are allowed. A telephone hearing was held on May 22, 2014. The claimant participated. Cynthia Sauer Redmond, Senior Finance/HR Director, and Scott Earl Senior Operations Director, participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

ISSUES:

The issue is whether claimant voluntarily quit with good cause attributable to the employer.

The issue is whether claimant quitting part-time employment makes her otherwise eligible for unemployment benefits.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant signed a Part-time Exempt Employee Offer Letter with the employer on April 2, 2012 and began work for the employer as a yoga instructor on April 21. The beginning wage for this position is \$15 per hour. Claimant added words with a smiley face to the compensation statement.

As early as August 2012 the employer questioned claimant class-time hours she was requesting to be paid at \$15 per hour. The employer advised claimant she was to be paid her hourly rate from the start of class time to the end of class. Claimant protested the paid hour issue by stating she needed pre-class and post class time to spend with her class participants teaching all aspects of Yoga. The employer did not relent on this issue and claimant was paid only for actual class hours from start to conclusion.

The class pay issue persisted into the fall of 2013. Claimant felt she should be paid for all hours spent with class participants regardless of actual class time. The employer stood on its August 2012 policy clarification.

Into December 2013 claimant was conducting five classes. The employer had recently hired Operations Director Earl on November 4 who managed claimant's direct supervisor. He was made aware claimant was not happy with her rate of pay and the employer limitation on the class hours she was paid for. On or about December 5 there was a meeting with the employer and claimant about the issue.

When claimant learned she was not going to receive more pay for her class work, she told the employer to take her off the schedule as of the end of December. The employer considered claimant was giving notice of quitting and complied with her request.

Claimant had filed an earlier unemployment claim effective December 16, 2012 while working for the employer. The department issued a decision January 24, 2013 that held claimant was still working at the same hours and wages and denied unemployment benefits. Claimant did not appeal.

More recently, claimant separated from employment at Rainbo Oil Company on March 24, 2014. The department issued an April 24, 2014 decision she was discharged for misconduct insubordination, and benefits are denied. Claimant's appeal is pending. The department also issued an April 29, 2014 summary decision that claimant has not re-qualified for benefits.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.25(13) provides:

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 section 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 section 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:

(13) The claimant left because of dissatisfaction with the wages but knew the rate of pay when hired.

The administrative law judge concludes claimant voluntarily quit without good cause attributable to the employer part-time employment on December 31, 2013 due to dissatisfaction with her pay.

Claimant had tested the pay issue when she filed her December 16, 2012 unemployment claim. The department issued a decision denying benefits as claimant was working the same job at the same hours and wages. Claimant did not appeal.

The initial employment agreement sets claimant's pay rate at \$15 per hour. The employer clarified the agreement in August 2012 stating claimant would be paid for actual class time hours from start to end. Although claimant disagreed with this clarification, she acquiesced by continuing her employment teaching through December 2013 based on the employer stipulation. The acquiescence negates a good cause for quitting attributable to the employer due to the lapse of time claimant accepted clarification and worked for the employer. Olson v. EAB, 460 NW 2nd 865 (Iowa App. 1990).

While the claimant's philosophical perspective of what Yoga is all about is superior to that of the employer, it had the right to limit claimant pay to actual class time from start to finish. Claimant knew in August 2012 the employer was unwilling to pay her for pre-class and post class Yoga instruction. Although claimant protested, she accepted it by continuing her employment. When it got to the point claimant could no longer tolerate the pay situation, she quit.

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 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.

A voluntary quit of part-time employment is not disqualifying, but eligibility depends on claimant's wages earned with other employers. The employer in this matter is relieved of liability for this claim. The department issued a decision claimant had not re-qualified for benefits as for her most recent employment at Rainbo on March 24, 2014.

The issue whether claimant is eligible for benefits is remanded to Claims for decision. Claimant has an active appeal from her March 24, 2014 employment separation at Rainbo. Claimant has earnings from other employers during the base period.

There is no benefit overpayment issue in this matter. Since claimant was disqualified by reason of her employment separation at Rainbo, no benefits have been paid as of the date of this hearing.

DECISION:

The department decision dated April 29, 2014, reference 03, is modified in favor of the employer. The claimant voluntarily quit without good cause part-time employment on

December 31, 2013. The issue whether benefits are allowed is remanded to Claims to determine whether claimant has qualifying wages. The employer is relieved of liability.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css