

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL E BENSON
Claimant

APPEAL NO. 10A-UI-16773-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAX INC
JAX OUTDOOR GEAR INC
Employer

OC: 11/14/10
Claimant: Appellant (5)

Iowa Code § 96.5(1) – Voluntary Leaving
871 IAC 24.27 – Voluntary Leaving Part Time Employment
871 IAC 24.19(1) – Determination and Review of Benefit Rights
871 IAC 24.28(6-8) – Prior Adjudication

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 3, 2010 (reference 01) decision in the November 14, 2010 claim year that denied benefits based upon a leaving of part-time employment on January 29, 2010 and did not allow benefits because there were no other base period wages to draw upon and no requalification since the separation. After due notice was issued, a telephone conference hearing was held on January 26, 2011. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant voluntarily left the employment on January 29, 2010 with good cause attributable to the employer.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part time and left the employment on January 29, 2010 to move to California with his spouse for her new job. In this new claim year the claimant does not have other full or part-time employment in the base period and has not requalified for benefits. Thus, he is no longer otherwise monetarily eligible for benefits after this 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the reasons that follow, the administrative law judge concludes the prior claim year decision on the same separation is no longer applicable.

871 IAC 24.28(6) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(6) The claimant voluntarily left employment. However, there shall be no disqualification under Iowa Code § 96.5(1) if a decision on this same separation has been made on a prior claim by a representative of the department and such decision has become final.

871 IAC 24.19(1) provides:

Claims for benefits shall be promptly determined by the department on the basis of such facts as it may obtain. Notice of such determination shall be promptly given to each claimant and to any employer whose employment relationship with the claimant, or the claimant's separation therefrom, involves actual or potential disqualifying issues relevant to the determination. . . . The notice of appeal rights shall state clearly the place and manner for taking an appeal from the determination and the period within which an appeal may be taken. Unless the claimant or any other such party entitled to notice, within ten days after such notification was mailed to such claimant's last-known address, files with the department a written request for a review of or an appeal from such determination, such determination shall be final.

Since the base period and attendant wages are different in this claim year, the prior decision cannot be adopted except as to the reason for the January 29, 2010 separation. The ALJ concludes the claimant voluntarily left the employment on January 29, 2010 without good cause attributable to the employer, but has not requalified and is not otherwise monetarily eligible.

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) 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 § 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.

Iowa Code § 96.5-1-g 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:

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.

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.

Inasmuch as claimant quit to move, the separation is disqualifying. Furthermore, since the claimant has not requalified for benefits since the separation and is not otherwise monetarily eligible according to base period wages, benefits are denied until the claimant requalifies and is otherwise eligible.

DECISION:

The December 3, 2010 (reference 01), decision is modified without change in effect. The claimant voluntarily left the employment on January 29, 2010 without good cause attributable to the employer, has not requalified for benefits, and is not otherwise monetarily eligible. Benefits are withheld until such time as the claimant works in and has been paid wages 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