

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY PEARSON

Claimant

APPEAL NO: 12A-UI-05337-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARY'S CLEANING CARE INC

Employer

OC: 04/01/12

Claimant: Appellant (4)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(35) – Health Issue
871 IAC 24.27 – Part-time Employment Qualification
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 4, 2012, reference 01, that held he voluntarily quit without good cause on March 20, 2012, and benefits are denied. A telephone hearing was held on May 31, 2012. The claimant participated. Laura Valencia, Office Manager, participated for the employer.

ISSUES:

Whether the claimant voluntarily quit with good cause attributable to the employer.

Whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked a part-time janitor job for the employer from about January 30, 2012 to March 9, 2012. He gave the employer a one-week notice he was quitting because the vacuum back pack was hurting his back. He did not seek the advice of a doctor to quit the job. Although he asked the employer if he could be moved to other cleaning jobs, the employer did not have work he could do without using the back pack.

Claimant has janitorial service experience based on the wage credits he has earned with his base-period employers. He is willing to accept cleaning work based on this work history.

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.

871 IAC 24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- (a) Obtain the advice of a licensed and practicing physician;
- (b) Obtain certification of release for work from a licensed and practicing physician;
- (c) Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- (d) Fully recover so that the claimant could perform all of the duties of the job.

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 administrative law judge concludes the claimant voluntarily quit part-time, non-base period employment without good cause attributable to the employer on March 9, 2012, but is monetarily eligible for benefits based on wages earned for regular or other base period employers. His quit without doctor's advice about his back problem is not for good cause.

A voluntary quit of part-time, non-base period employment is not disqualifying. The claimant is eligible for benefits based on earnings from base period employer(s). The employer in this case shall not be charged for benefits paid to the claimant on this claim.

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".

The administrative law judge further concludes claimant is able and available for work. The only work issue restricting claimant is the use of a vacuum back pack. He has demonstrated extensive janitorial cleaning experience that makes him otherwise able to perform this work.

DECISION:

The department decision dated May 4, 2012, reference 01, is modified. The claimant voluntarily quit part-time, non-base period employment on March 9, 2012. The claimant is eligible for unemployment benefits by base period employment earnings, but the employer in this case is not liable for benefit charges subject to future requalification. No availability disqualification is imposed.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css