

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

JULIE M VOSS

Claimant

and

MARRIOTT HOTEL SVCS INC

Employer

HEARING NUMBER: 17BUI-08122

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below, and **REMANDS** to the Benefits Bureau on the issues of availability and seeking work.

FINDINGS OF FACT:

Julie Voss (Claimant) worked for Marriott Hotel Services (Employer) for a single day. She worked a half day of orientation on July 10, 2017 and then quit on July 11. She quit because she had accepted a job with Highland Ridge Presbyterian Homes & Services. She had to undergo some preliminaries, including a blood test and background check, before actually starting work for Highland Ridge. After quitting Marriott and while awaiting her start with Highland Ridge she filed for and received unemployment benefits. She did start work, and receive wages for, covered wages with Highland Ridge Presbyterian Homes & Services. Ex. A.

REASONING AND CONCLUSIONS OF LAW:

Quit Disqualification: This case involves a voluntary quit. Iowa Code Section 96.5(1) states:

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.

Even where a claimant quits but without good cause attributable to the employer, the claimant may nevertheless collect benefits under certain circumstances. One of which is where the quit is for the purpose of accepting other employment. On this issue the Code provides:

- 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.

Iowa Code §96.5(1)(a). Here the Claimant quit Marriott for exactly this sole purpose. The statute addresses only whether the separation is disqualifying and is not concerned with what happens after the separation. Manifestly the plain meaning of the law is that the separation is not disqualifying.

In cases of quitting for different employment “[b]enefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund.” Iowa Code §95.5(1)(a). The upshot is that Marriott will not be charged for any benefits that we allow today. Since Marriott was the employer whom the Claimant quit in order to take another job, under the law **Marriott’s account may not be charged** with benefits paid to the Claimant. Iowa Code §96.5(1)(a); 871 IAC 23.43(5)(no charge to prior employer when quit for other or better job).

Availability Remand: Normally claimants are not eligible to collect benefits while they are waiting to start a new job. This is because a claimant must be able and available and earnestly and actively seeking work. Iowa Code §96.4(3). The rules of the Department provide:

- 24.23(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer **or waiting to go to work for a specific employer** and will not consider suitable work with other employers.

871 IAC 24.23(20); see also 871 IAC 24.22(2). The question of availability was not addressed in the hearing, and was not included in the notice of hearing. “Iowa Code section 17A.12 provides all parties to a contested case shall be afforded an opportunity for hearing after reasonable notice in writing. The notice shall include a reference to the particular sections of statutes and rules implicated and a short and plain statement of the matters asserted. Iowa Code §17A.12(2)(c) and (d).” *Silva v. Employment Appeal Board*, 547 N.W.2d 232, 235 (Iowa 1996). The plain language of §17A.12(2)(c) and (d) allows the hearing to proceed only on those issues, and concerning those Code sections, that are identified in the Notice of Hearing. Here the notice did not include

availability as an issue, nor earnestly and actively seeking work. Those issues are found in a different Code section than the issue of separation from employment. This prevents us from addressing the issues of availability, and seeking work. Iowa Code §17A.12; *Silva v. Employment Appeal Board*, 547 N.W.2d 232, 235 (Iowa 1996). Thus we remand on these issues. Since there is no Benefits Bureau ruling on these issues, we remand the matter to the Benefits Bureau.

DECISION:

The administrative law judge's decision dated August 30, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits **provided** the Claimant is otherwise eligible. Any overpayment which may have been entered against the Claimant as a result of the Administrative Law Judge's decision in this case is vacated and set aside, **at this time**. We caution the Claimant that the overpayment may be reinstated if it appears that she was not looking for work while awaiting the start at Highland Ridge.

The issue of whether the Claimant was able and available, and earnestly and actively seeking work during the weeks in question, given rule 24.23(20), is **REMANDED** to the Benefits Bureau.

Kim D. Schmett

Ashley R. Koopmans

James M. Strohman